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THE GENERAL STATUTES OF NORTH CAROLINA

Containing General Laws of North Carolina through the Session Laws of 1973, Second Session

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Prepared under the Supervision of the Department of Justice of the State of North Carolina

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Annotated, under the Supervision of the Department of Justice, by the Editorial Staff of the Publishers

Under the Direction of

W. M. Willson, J. H. Vaughan, Sylvia Faulkner and Elizabeth E. Pincus

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Volume 3A

1975 Replacement Volume

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Scope of Volume

Statutes:

Full text of Chapters 106 through 116A of the General Statutes of North Carolina, including all enactments through the Session Laws of 1973, First and Second Sessions, heretofore contained in 1966 Replacement Volume 3A of the General Statutes of North Carolina and the 1974 Cumulative Supplement thereto.

Annotations:

Sources of the annotations to the General Statutes appearing in this volume are:
North Carolina Reports volumes 1-285 (p. 597).
North Carolina Court of Appeals Reports volumes 1-22 (p. 508).
Federal Reporter volumes 1-300.
Federal Reporter 2nd Series volumes 1-498 (p. 912).
Federal Supplement volumes 1-377 (p. 192).
Federal Rules Decisions volumes 1-63 (p. 229).
United States Reports volumes 1-415 (p. 604).
Supreme Court Reporter volumes 1-94 (p. 3234).
North Carolina Law Review volumes 1-49 (p. 1006).
Wake Forest Intramural Law Review volumes 2-7 (p. 697).
Opinions of the Attorney General.

Abbreviations

(The abbreviations below are those found in the General Statutes which refer to prior codes.)

P. R. . . . . Potter's Revisal (1821, 1827)
R. S. . . . . Revised Statutes (1837)
R. C. . . . . Revised Code (1854)
C. C. P. . . . . Code of Civil Procedure (1868)
Code . . . . . Code (1883)
Rev. . . . . Revisal of 1905
C. S. . . . . Consolidated Statutes (1919, 1924)

Preface

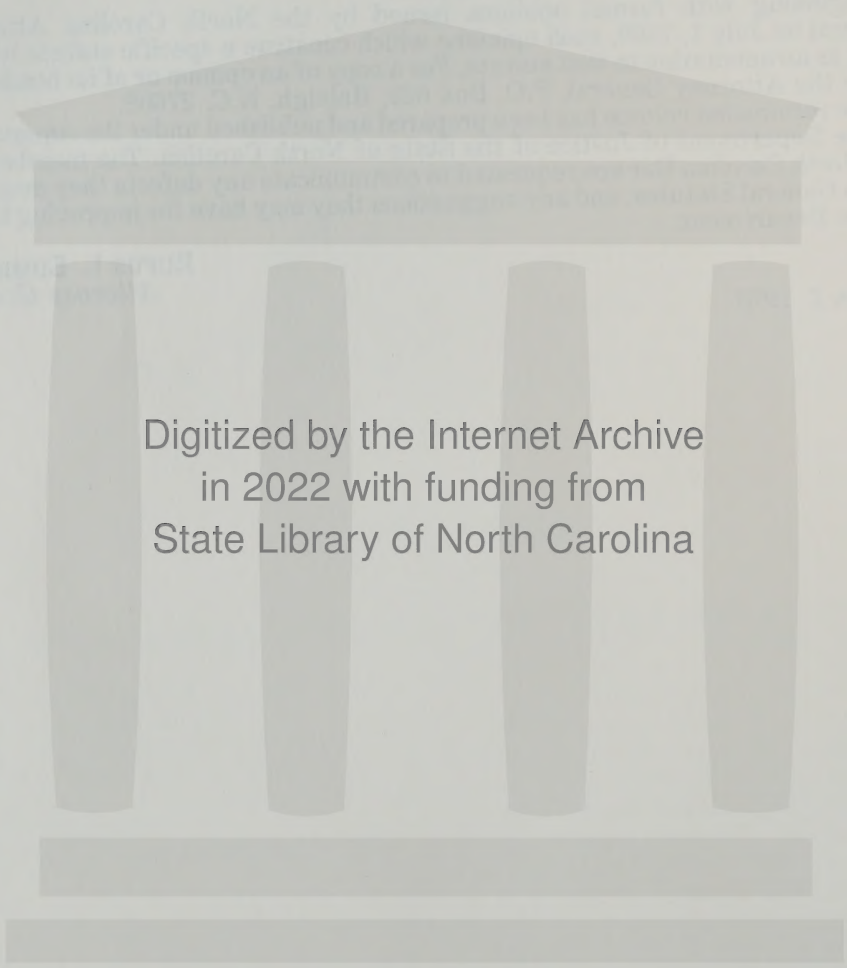
Volume 3A, last replaced in 1966, accumulated a supplement nearly equalling the bound volume in size and including, among other things, extensive changes in the chapters relating to social services, child welfare, conservation and development and education and new Chapters 113A, Pollution Control and Environment, and 116A, Escheats and Abandoned Property. This 1975 Replacement Volume is issued to incorporate the new material in the bound volume and to eliminate what is obsolete.

Beginning with formal opinions issued by the North Carolina Attorney General on July 1, 1969, such opinions which construe a specific statute will be cited as an annotation to that statute. For a copy of an opinion or of its headnotes write the Attorney General, P.O. Box 629, Raleigh, N.C. 27602.

The recompiled volume has been prepared and published under the supervision of the Department of Justice of the State of North Carolina. The members of the North Carolina Bar are requested to communicate any defects they may find in the General Statutes, and any suggestions they may have for improving them, to the Department.

RUFUS L. EDMISTEN
Attorney General

March 1, 1975



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Table of Contents

VOLUME 1A.

Chapter 1. Civil Procedure.
Chapter 1A. Rules of Civil Procedure.
Chapter 1B. Contribution.

VOLUME 1B.

Chapter 2. Clerk of Superior Court.
Chapter 3. Commissioners of Affidavits and Deeds [Repealed].
Chapter 4. Common Law.
Chapter 5. Contempt.
Chapter 6. Liability for Court Costs.
Chapter 7. Courts.
Chapter 7A. Judicial Department.
Chapter 8. Evidence.
Chapter 8A. Interpreters for Deaf Persons.
Chapter 9. Jurors.
Chapter 10. Notaries.
Chapter 11. Oaths.
Chapter 12. Statutory Construction.
Chapter 13. Citizenship Restored.
Chapter 14. Criminal Law.

VOLUME 1C.

Chapter 15. Criminal Procedure.
Chapter 15A. Criminal Procedure Act.
Chapter 16. Gaming Contracts and Futures.
Chapter 17. Habeas Corpus.
Chapter 17A. Law-Enforcement Officers.
Chapter 17B. North Carolina Criminal Justice Education and Training System.
Chapter 18. Regulation of Intoxicating Liquors [Repealed].
Chapter 18A. Regulation of Intoxicating Liquors.
Chapter 19. Offenses against Public Morals.
Chapter 19A. Protection of Animals.
Chapter 20. Motor Vehicles.

VOLUME 1D.

Chapter 21. Bills of Lading.
Chapter 22. Contracts Requiring Writing.
Chapter 23. Debtor and Creditor.
Chapter 24. Interest.
Chapter 25. Uniform Commercial Code.
Chapter 25A. Retail Installment Sales Act.
Chapter 25B. Credit.
Chapter 26. Suretyship.
Chapter 27. Warehouse Receipts.

VOLUME 2A.

Chapter 28. Administration [Repealed].
Chapter 28A. Administration of Decedents' Estates.
Chapter 28B. Estates of Absentees in Military Service.
Chapter 28C. Estates of Missing Persons.
Chapter 29. Intestate Succession.
Chapter 30. Surviving Spouses.
Chapter 31. Wills.
Chapter 31A. Acts Barring Property Rights.
Chapter 32. Fiduciaries.
Chapter 33. Guardian and Ward.
Chapter 34. Veterans' Guardianship Act.
Chapter 35. Persons with Mental Diseases and Incompetents.
Chapter 36. Trusts and Trustees.
Chapter 37. Allocation of Principal and Income.
Chapter 38. Boundaries.
Chapter 39. Conveyances.
Chapter 40. Eminent Domain.
Chapter 41. Estates.
Chapter 42. Landlord and Tenant.
Chapter 43. Land Registration.
Chapter 44. Liens.
Chapter 44A. Statutory Liens and Charges.
Chapter 45. Mortgages and Deeds of Trust.
Chapter 46. Partition.
Chapter 47. Probate and Registration.
Chapter 47A. Unit Ownership Act.
Chapter 47B. Real Property Marketable Title Act.
Chapter 48. Adoptions.
Chapter 48A. Minors.
Chapter 49. Bastardy.
Chapter 49A. Rights of Children.
Chapter 50. Divorce and Alimony.
Chapter 51. Marriage.
Chapter 52. Powers and Liabilities of Married Persons.
Chapter 52A. Uniform Reciprocal Enforcement of Support Act.

VOLUME 2B.

Chapter 53. Banks.
Chapter 53A. Business Development Corporations.
Chapter 54. Cooperative Organizations.
Chapter 55. Business Corporation Act.
Chapter 55A. Nonprofit Corporation Act.
Chapter 55B. Professional Corporation Act.
Chapter 56. Electric, Telegraph and Power Companies [Repealed].
Chapter 57. Hospital, Medical and Dental Service Corporations.
Chapter 58. Insurance.
Chapter 59. Partnership.
Chapter 60. Railroads and Other Carriers [Repealed and Transferred].
Chapter 61. Religious Societies.
Chapter 62. Public Utilities.

VOLUME 2C.

Chapter 63. Aeronautics.
Chapter 64. Aliens.
Chapter 65. Cemeteries.
Chapter 66. Commerce and Business.
Chapter 67. Dogs.
Chapter 68. Fences and Stock Law.
Chapter 69. Fire Protection.
Chapter 70. Indian Antiquities.
Chapter 71. Indians.
Chapter 72. Inns, Hotels and Restaurants.
Chapter 73. Mills.
Chapter 74. Mines and Quarries.
Chapter 74A. Company Police.
Chapter 74B. Private Protective Services Act.
Chapter 75. Monopolies, Trusts and Consumer Protection.
Chapter 75A. Boating and Water Safety.
Chapter 76. Navigation.
Chapter 77. Rivers and Creeks.
Chapter 78. Securities Law [Repealed].
Chapter 78A. North Carolina Securities Act.
Chapter 79. Strays.
Chapter 80. Trademarks, Brands, etc.
Chapter 81. Weights and Measures.
Chapter 82. Wrecks [Repealed].
Chapter 83. Architects.
Chapter 84. Attorneys at Law.
Chapter 85. Auctions and Auctioneers [Repealed].
Chapter 85A. Bail Bondsmen and Runners.
Chapter 85B. Auctions and Auctioneers.
Chapter 86. Barbers.
Chapter 87. Contractors.
Chapter 88. Cosmetic Art.
Chapter 89. Engineering and Land Surveying.
Chapter 89A. Landscape Architects.
Chapter 90. Medicine and Allied Occupations.
Chapter 90A. Sanitarians and Water and Wastewater Treatment Facility Operators.
Chapter 91. Pawnbrokers.
Chapter 92. Photographers [Deleted].
Chapter 93. Public Accountants.
Chapter 93A. Real Estate Brokers and Salesmen.
Chapter 93B. Occupational Licensing Boards.
Chapter 93C. Watchmakers.
Chapter 93D. North Carolina State Hearing Aid Dealers and Fitters Board.
Chapter 94. Apprenticeship.
Chapter 95. Department of Labor and Labor Regulations.
Chapter 96. Employment Security.

VOLUME 2D.

Chapter 97. Workmen's Compensation Act.
Chapter 98. Burnt and Lost Records.
Chapter 99. Libel and Slander.
Chapter 99A. Civil Remedies for Criminal Actions.
Chapter 100. Monuments, Memorials and Parks.
Chapter 101. Names of Persons.
Chapter 102. Official Survey Base.
Chapter 103. Sundays, Holidays and Special Days.
Chapter 104. United States Lands.
Chapter 104A. Degrees of Kinship.
Chapter 104B. Hurricanes or Other Acts of Nature.
Chapter 104C. Atomic Energy, Radioactivity and Ionizing Radiation.
Chapter 104D. Southern Interstate Nuclear Compact.
Chapter 105. Taxation.

VOLUME 3A.

PAGE

CHAPTER 106. AGRICULTURE 1
Art. 1. Department of Agriculture 16
Art. 1A. State Farm Operations Commission 29
Art. 2. North Carolina Fertilizer Law of 1947 31
Art. 3. Fertilizer Laboratories 44
Art. 4. Insecticides and Fungicides [Repealed] 45
Art. 4A. Insecticide, Fungicide and Rodenticide Act of 1947 [Repealed] 45
Art. 4B. Aircraft Application of Pesticides [Repealed] 45
Art. 4C. Structural Pest Control Act 45
Art. 4D. North Carolina Biological Organism Act 54
Art. 5. Seed Cotton and Peanuts 55
Art. 5A. Marketing of Farmers Stock Peanuts 56
Art. 6. Cottonseed Meal 58
Art. 7. Pulverized Limestone and Marl 60
Art. 8. Sale, etc., of Agricultural Liming Material, etc. 61
Art. 9. Commercial Feedingstuffs [Repealed] 64
Art. 10. Mixed Feed Oats 65
Art. 11. Stock and Poultry Tonics 65
Art. 12. Food, Drugs and Cosmetics 67
Art. 13. Canned Dog Foods [Repealed] 82
Art. 14. State Inspection of Slaughterhouses 82
Art. 14A. Licensing and Regulation of Rendering Plants and Rendering Operations 84
Art. 15. Inspection of Meat and Meat Products by Counties and Cities 87
Art. 15A. Meat Grading Law 88
Art. 16. Bottling Plants for Soft Drinks 90
Art. 17. Marketing and Branding Farm Products 92
Art. 18. Shipper's Name on Receptacles 95
Art. 19. Trademark for Standardized Farm Products 95
Art. 20. Standard Weight of Flour and Meal [Repealed] 97
Art. 21. Artificially Bleached Flour 97

PAGE
Art. 21A. Enrichment of Flour, Bread, Cornmeal and Grits 98
Art. 22. Inspection of Bakeries 101
Art. 23. Oleomargarine 105
Art. 24. Excise Tax on Certain Oleomargarines 106
Art. 25. North Carolina Egg Law [Repealed] 106
Art. 25A. North Carolina Egg Law 106
Art. 26. Inspection of Ice Cream Plants, Creameries, and Cheese Factories 110
Art. 27. Records of Purchases of Milk Products 112
Art. 28. Records and Reports of Milk Distributors and Processors 113
Art. 28A. Regulation of Milk Brought into North Carolina from Other States 115
Art. 28B. Regulation of Production, Distribution, etc., of Milk and Cream 117
Art. 29. Inspection, Grading and Testing Milk and Dairy Products 127
Art. 30. Board of Crop Seed Improvement 130
Art. 31. North Carolina Seed Law 131
Art. 31A. Seed Potato Law [Repealed] 147
Art. 31B. Vegetable Plant Law 147
Art. 31C. North Carolina Commercial Feed Law of 1973 150
Art. 32. Linseed Oil 159
Art. 33. Adulterated Turpentine 162
Art. 34. Animal Diseases 162
Art. 35. Public Livestock Markets 190
Art. 35A. North Carolina Livestock Prompt Pay Law 197
Art. 35B. Livestock Dealer Licensing Act 198
Art. 36. Plant Pests 200
Art. 37. Cotton Grading 202
Art. 38. Marketing Cotton and Other Agricultural Commodities .. 203
Art. 39. Leaf Tobacco Warehouses 214
Art. 40. Leaf Tobacco Sales 215
Art. 41. Dealers in Scrap Tobacco 219
Art. 42. Production, Sale, Marketing and Distribution of Tobacco [Repealed] 222
Art. 43. Combines and Power Threshers 222
Art. 44. Unfair Practices by Handlers of Fruits and Vegetables .. 222
Art. 45. Agricultural Societies and Fairs 224
Art. 46. Erosion Equipment 229
Art. 47. State Marketing Authority 231
Art. 48. Relief of Potato Farmers 234
Art. 49. Poultry; Hatcheries; Chick Dealers 235
Art. 49A. Voluntary Inspection of Poultry 237
Art. 49B. Meat Inspection Requirements; Adulteration and Misbranding 239
Art. 49C. Federal and State Cooperation as to Meat Inspection; Implementation of Inspection 249
Art. 49D. Poultry Products Inspection Act 254
Art. 49E. Disposal of Dead Diseased Poultry at Commercial Farms 270
Art. 49F. Biological Residues in Animals 271
Art. 50. Promotion of Use and Sale of Agricultural Products 272
Art. 50A. Promotion of Agricultural Research and Dissemination of Findings 279
Art. 50B. North Carolina Agricultural Hall of Fame 282
Art. 50C. Promotion of Sale and Use of Tobacco 282
Art. 51. Inspection and Regulation of Sale of Antifreeze Substances and Preparations 286

PAGE
Art. 52. Agricultural Development 289
Art. 53. Grain Dealers 291

CHAPTER 107. AGRICULTURAL DEVELOPMENT DISTRICTS [Repealed] . . . 295

CHAPTER 108. SOCIAL SERVICES 296
Art. 1. Administration 298
Art. 2. Programs of Public Assistance 303
Art. 3. Inspection and Licensing Authority 320
Art. 4. Protection of the Abused or Neglected Elderly Act 325
Art. 5. Family Food Assistance Program 328
Art. 6. Economic Opportunity Agencies 329

CHAPTER 109. BONDS 332
Art. 1. Official Bonds 332
Art. 2. Bonds in Surety Company 337
Art. 3. Mortgage in Lieu of Bond 338
Art. 4. Deposit in Lieu of Bond 341
Art. 5. Actions on Bonds 341

CHAPTER 110. CHILD WELFARE 349
Art. 1. Child Labor Regulations 350
Art. 1A. Exhibition of Children 356
Art. 2. Juvenile Services 357
Art. 2A. Parental Control of Children 359
Art. 3. Control over Child-Caring Facilities 360
Art. 4. Placing or Adoption of Juvenile Delinquents or Dependents 361
Art. 4A. Interstate Compact on the Placement of Children 363
Art. 5. Interstate Compact on Juveniles 367
Art. 6. Governor's Advocacy Council on Children and Youth 375
Art. 7. Day-Care Facilities 377
Art. 8. Child Abuse and Neglect 386

CHAPTER 111. AID TO THE BLIND 390
Art. 1. General Duties of Department of Human Resources 391
Art. 2. Aid to the Needy Blind 395
Art. 3. Operation of Vending Facilities on State Property 405

CHAPTER 112. CONFEDERATE HOMES AND PENSIONS 407
Art. 1. Confederate Woman's Home 407
Art. 2. Pensions 408

CHAPTER 113. CONSERVATION AND DEVELOPMENT 417
Art. 1. Powers and Duties of Department of Natural and Economic Resources Generally 423
Art. 1A. Special Peace Officers 431
Art. 1B. Aviation 432
Art. 1C. Commission on International Cooperation [Repealed] . . 435
Art. 2. Acquisition and Control of State Forests and Parks 435
Art. 2A. Forestry Advisory Committee [Repealed] 441
Art. 3. Private Lands Designated as State Forests 442
Art. 4. Protection and Development of Forests; Fire Control . . . 443
Art. 4A. Protection of Forest against Insect Infestation and Disease 447
Art. 4B. Southeastern Interstate Forest Fire Protection Compact 449
Art. 5. Corporations for Protection and Development of Forests. 453
Art. 6. Fishing Generally 458
Art. 6A. Forestry Services and Advice for Owners and Operators of Forest Land 458
Art. 6B. License Agents 460

PAGE
Art. 7. North Carolina Game Law of 1935 464
Art. 7A. Safe Distances for Hunting Migratory Wild Waterfowl. 489
Art. 8. Fox Hunting Regulations 490
Art. 9. Federal Regulations on Federal Lands 491
Art. 10. Regulation of Fur Dealers; Licenses 492
Art. 10A. Trespassing upon "Posted" Property to Hunt, Fish or Trap 493
Art. 10B. Liability of Landowners to Authorized Users 495
Art. 11. Miscellaneous Provisions 495
Art. 12. General Definitions 497
Art. 13. Jurisdiction of Fisheries Agencies 500
Art. 14. Commercial and Sports Fisheries Licenses and Taxes . . . 508
Art. 15. Regulation of Coastal Fisheries 518
Art. 16. Cultivation of Oysters and Clams 521
Art. 17. Administrative Provisions; Regulatory Authority of Marine Fisheries Commission and Department 529
Art. 18. Commercial and Sports Fisheries Advisory Board [Repealed and Reserved] 538
Art. 19. Marine Fisheries Compact and Commission 538
Art. 20. Miscellaneous Regulatory Provisions 544
Art. 21. Inland Fishing Licenses 546
Art. 22. Regulation of Inland Fisheries 552
Art. 23. Administrative Provisions; Regulatory Authority of Wildlife Resources Commission 554
Art. 23A. Promotion of Coastal Fisheries and Seafood Industry . . 556
Art. 23B. Fishermen's Economic Development Program 560
Art. 24. Miscellaneous Transitional Provisions 561
Art. 25. [Reserved] 563
Art. 26. [Transferred] 563
Art. 26A. Repeal of Acts 563
Art. 27. Oil and Gas Conservation 564
Art. 28. Drillers Using Power Machinery [Repealed] 582

CHAPTER 113A. POLLUTION CONTROL AND ENVIRONMENT 583
Art. 1. Environmental Policy Act 584
Art. 2. Interstate Environmental Compact 587
Art. 3. Natural and Scenic Rivers System 590
Art. 4. Sedimentation Pollution Control Act of 1973 594
Art. 5. North Carolina Appalachian Trails System Act 602
Art. 6. North Carolina Trails System 603
Art. 7. Coastal Area Management 606
Art. 8. North Carolina Land Conservancy Corporation 631
Art. 9. Land Policy Act 634

CHAPTER 114. DEPARTMENT OF JUSTICE 642
Art. 1. Attorney General 642
Art. 2. Division of Legislative Drafting and Codification of Statutes 645
Art. 3. Division of Criminal Statistics 646
Art. 3A. Special Prosecution Division 648
Art. 4. State Bureau of Investigation 648

CHAPTER 115. ELEMENTARY AND SECONDARY EDUCATION 653
Art. 1. State Plan for Public Education 661
Art. 2. The State Board of Education 666
Art. 2A. The Council on Educational Services for Exceptional Children 670
Art. 3. State Superintendent of Public Instruction 671
Art. 4. Powers and Duties of Controller 673

PAGE
Art. 5. County and City Boards of Education 675
Art. 6. Powers and Duties of Superintendents 691
Art. 7. School Committees — Their Duties and Powers 696
Art. 8. Creating and Consolidating School Districts and School Administrative Units 699
Art. 9. County and City Boards of Education and Budgets 704
Art. 10. The Treasurer; His Powers, Duties and Responsibilities in Disbursing School Funds 715
Art. 11. Loans from State Literary Fund 720
Art. 12. Assumption of School District Indebtedness by Counties. 723
Art. 13. Refunding and Funding Bonds of School Districts 724
Art. 14. School Areas Authorized to Vote Local Taxes 725
Art. 15. School Sites and Property 734
Art. 16. State Insurance of Public School Property 742
Art. 17. Principals' and Teachers' Employment and Contracts ... 746
Art. 17A. Interstate Agreement on Qualifications of Educational Personnel 762
Art. 18. Certification and Salaries of Employees; Workmen's Compensation 765
Art. 18A. Payroll Savings Plan for Purchase of United States Bonds 772
Art. 18B. Student Teachers 773
Art. 19. Census, Admissions and Attendance 773
Art. 20. General Compulsory Attendance Law 776
Art. 20A. Child Health Program 779
Art. 21. Assignment and Enrollment of Pupils 780
Art. 22. School Buses 791
Art. 23. Certain Injuries to School Children Compensable 803
Art. 24. Courses of Study 804
Art. 24A. Kindergartens 808
Art. 25. Selection and Adoption of Textbooks [Repealed] 809
Art. 25A. Textbooks and Instructional Material 809
Art. 26. Providing Basal and Supplemental Textbooks and Instructional Materials [Repealed] 813
Art. 27. Vocational Education 813
Art. 28. Textile Training School [Transferred] 815
Art. 29. Vocational Training in Building Trades 815
Art. 30. Vocational Rehabilitation of Persons Disabled in Industry or Otherwise 816
Art. 31. Private Business, Trade and Correspondence Schools ... 817
Art. 32. Nonpublic Schools 823
Art. 33. Safety Devices Required 824
Art. 34. Local Option [Repealed] 825
Art. 35. Education Expense Grants [Repealed] 825
Art. 36. Training of Mentally Retarded Children 825
Art. 37. Training of Educable Mentally Handicapped Children ... 826
Art. 38. Education of Exceptionally Talented Children 828
Art. 38A. Education for Hearing-Impaired Children in the Public Schools 830
Art. 38B. Education Expense Grants for Exceptional Children ... 832
Art. 38C. Section for the Education of Children with Learning Disabilities 834
Art. 39. Voluntary Endowment Funds for Public Schools 835
Art. 40. Governor Morehead School 837
Art. 41. Central North Carolina School for the Deaf 839
Art. 42. Central Orphanage of North Carolina 840
Art. 43. Interstate Compact for Education 842
Art. 44. North Carolina Advancement School 847

PAGE

CHAPTER 115A. COMMUNITY COLLEGES, TECHNICAL INSTITUTES, AND INDUSTRIAL EDUCATION CENTERS 849
Art. 1. General Provisions for State Administration 850
Art. 2. Local Administration 854
Art. 3. Financial Support 860
Art. 4. Budgeting, Accounting, and Fiscal Management 865
Art. 5. Special Provisions 870
Art. 6. Textile Training School 871

CHAPTER 116. HIGHER EDUCATION 873
Art. 1. The University of North Carolina 876
Art. 1A. Regional Universities [Repealed] 905
Art. 2. Western Carolina University, East Carolina University, Appalachian State University, North Carolina Agricultural and Technical State University [Repealed and Transferred] 905
Art. 3. Community Colleges 905
Art. 4. North Carolina School of the Arts 914
Art. 5. Loan Fund for Prospective College Teachers 915
Arts. 6-9. [Repealed] 916
Art. 10. State School for the Blind and the Deaf in Raleigh [Transferred] 916
Art. 11. North Carolina School for the Deaf at Morganton [Transferred and Repealed] 916
Art. 11A. Eastern North Carolina School for the Deaf and North Carolina School for the Deaf at Morganton [Transferred] 917
Art. 12. The Caswell School [Repealed] 917
Art. 13. Colored Orphanage of North Carolina [Transferred] 917
Art. 13A. Negro Training School for Feebleminded Children [Repealed] 917
Art. 14. General Provisions as to Tuition and Fees in Certain State Institutions 917
Art. 15. Educational Advantages for Children of World War Veterans [Repealed] 920
Art. 16. State Board of Higher Education [Repealed and Transferred] 920
Art. 17. College Revolving Fund 921
Art. 18. Scholarship Loan Fund for Prospective Teachers 922
Art. 18A. Contracts of Minors Borrowing for Higher Education; Scholarship Revocation 924
Art. 19. Revenue Bonds for Student Housing 925
Art. 20. Motor Vehicles of Students [Transferred] 930
Art. 21. Revenue Bonds for Student Housing, Student Activities, Physical Education and Recreation 930
Art. 22. Visiting Speakers at State-Supported Institutions 937
Art. 23. State Education Assistance Authority 938
Art. 24. Learning Institute of North Carolina 952
Art. 25. Disruption on Campuses of State-Owned Institutions of Higher Education 953

CHAPTER 116A. ESCHEATS AND ABANDONED PROPERTY 954

VOLUME 3B.

Chapter 117. Electrification.
Chapter 118. Firemen's Relief Fund.
Chapter 118A. Firemen's Death Benefit Act [Repealed].
Chapter 118B. Members of a Rescue Squad Death Benefit Act [Repealed].

Chapter 119. Gasoline and Oil Inspection and Regulation.
Chapter 120. General Assembly.
Chapter 121. Archives and History.
Chapter 122. Hospitals for the Mentally Disordered.
Chapter 122A. North Carolina Housing Finance Agency.
Chapter 123. Impeachment.
Chapter 123A. Industrial Development.
Chapter 124. Internal Improvements.
Chapter 125. Libraries.
Chapter 126. State Personnel System.
Chapter 127. Militia.
Chapter 128. Offices and Public Officers.
Chapter 129. Public Buildings and Grounds.
Chapter 130. Public Health.
Chapter 131. Public Hospitals.
Chapter 132. Public Records.
Chapter 133. Public Works.
Chapter 134. Youth Development.
Chapter 135. Retirement System for Teachers and State Employees; Social Security.
Chapter 136. Roads and Highways.

VOLUME 3C.

Chapter 137. Rural Rehabilitation.
Chapter 138. Salaries, Fees and Allowances.
Chapter 139. Soil and Water Conservation Districts.
Chapter 140. State Art Museum; Symphony and Art Societies.
Chapter 140A. State Awards System.
Chapter 141. State Boundaries.
Chapter 142. State Debt.
Chapter 143. State Departments, Institutions, and Commissions.
Chapter 143A. State Government Reorganization.
Chapter 143B. Executive Organization Act of 1973.
Chapter 144. State Flag, Motto and Colors.
Chapter 145. State Flower, Bird, Tree, Shell, Mammal, Fish, Insect and Stone.
Chapter 146. State Lands.
Chapter 147. State Officers.
Chapter 148. State Prison System.
Chapter 149. State Song and Toast.
Chapter 150. Uniform Revocation of Licenses [Repealed].
Chapter 150A. Administrative Procedure Act.
Chapter 151. Constables [Repealed].
Chapter 152. Coroners.
Chapter 152A. County Medical Examiner [Repealed].
Chapter 153. Counties and County Commissioners [Repealed].
Chapter 153A. Counties.
Chapter 154. County Surveyor [Repealed].
Chapter 155. County Treasurer [Repealed].
Chapter 156. Drainage.

VOLUME 3D.

Chapter 157. Housing Authorities and Projects.
Chapter 157A. Historic Properties Commissions [Transferred].

Chapter 158. Local Development.
Chapter 159. Local Government Finance.
Chapter 159A. Pollution Abatement and Industrial Facilities Financing Act.
Chapter 160. Municipal Corporations.
Chapter 160A. Cities and Towns.
Chapter 160B. Consolidated City-County Act.
Chapter 161. Register of Deeds.
Chapter 162. Sheriff.
Chapter 162A. Water and Sewer Systems.
Chapter 162B. Continuity of Local Government in Emergency.
Chapter 163. Elections and Election Laws.
Chapter 164. Concerning the General Statutes of North Carolina.
Chapter 165. Veterans.
Chapter 166. Civil Defense Agencies.
Chapter 167. State Civil Air Patrol.
Chapter 168. Handicapped Persons.

VOLUME 4A.

Constitution of North Carolina.
Constitution of the United States.
Appendix.
- Rules of Court.
- Removal of Causes.
- Authentication of Records.
- Extradition.
- Rules, Regulations and Organization of the North Carolina State Bar.
- Code of Professional Responsibility of the North Carolina State Bar.
- Code of Judicial Conduct.
- Regulations Relating to the Appointment of Counsel for Indigent Defendants in Certain Criminal Cases.
- Rules Governing Admission to Practice of Law.
- Rules Governing Practical Training of Law Students.
- North Carolina Supreme Court Library Rules.
- Tables.

VOLUME 4B.

Index (Letters A-E).

VOLUME 4C.

Index (Letters F-O).

VOLUME 4D.

Index (Letters P-Z).

Chapter 106.

Agriculture.

Article 1.

Department of Agriculture.

Part 1. Board of Agriculture.

Sec.

106-1. Constitutional provision.

106-2. Department of Agriculture, Immigration, and Statistics established; Board of Agriculture, membership, terms of office, etc.

106-3. Compensation of members.

106-4. Meetings of Board.

106-5. Executive committee and finance committee.

106-6. Moneys received to be paid into State treasury.

106-7. Power of Board.

106-8. May require bonds of officers.

106-9. Annual report.

106-9.1. Investment of surplus in agriculture fund in interest-bearing government securities.

Part 1A. Collection and Refund of Fees and Taxes.

106-9.2. Records and reports required of persons paying fees or taxes to Commissioner or Department; examination of records; determination of amount due by Commissioner in case of noncompliance.

106-9.3. Procedure for assessment of fees and taxes.

106-9.4. Collection of delinquent fees and taxes.

106-9.5. Refund of overpayment.

106-9.6. Suits to prevent collection prohibited; payment under protest and recovery of fee or tax so paid.

Part 2. Commissioner of Agriculture.

106-10. Election; term; vacancy.

106-11. Salary of Commissioner of Agriculture.

106-12. To appoint secretary and other officials.

106-13. To investigate purchases, sources, and manufacture of fertilizer.

106-14. To establish regulations for transportation of livestock.

Part 3. Powers and Duties of Department and Board.

106-15. Agricultural research station and branch stations.

106-16. Purchase and sale of research farms; use of proceeds.

106-17. Acquisition of research farm.

Sec.

106-18. Peanut research farm.

106-19. State Chemist; duties of office.

106-20. Inoculating culture for leguminous crops.

106-21. Timber conditions to be investigated and reported.

106-22. Joint duties of Commissioner and Board.

Part 4. Cooperation of Federal and State Governments in Agricultural Work.

106-23. Legislative assent to Adams Act for experiment station.

Part 5. Cooperation between Department and United States Department of Agriculture, and County Commissioners.

106-24. Collection and publication of information relating to agriculture; cooperation.

106-25. Department to furnish report books or forms for procuring and tabulating information; appointment and duties of persons collecting and compiling information; information confidential.

106-26. Compensation for making reports; examination of report books, etc., by Department of Agriculture.

106-26.1. Cooperation of county farm and home demonstration agents and vocational teachers.

106-26.2 to 106-26.6. [Reserved.]

Article 1A.

State Farm Operations Commission.

106-26.7. Creation of State Farm Operations Commission.

106-26.8. Powers and duties of State Farm Operations Commission.

106-26.9. Powers and duties of Commissioner of Agriculture.

106-26.10. Budgetary organization.

106-26.11. Use of products.

106-26.12. Expenses of Commission members.

Article 2.

North Carolina Fertilizer Law of 1947.

106-27 to 106-50. [Superseded.]

106-50.1. Title.

106-50.2. Enforcing official.

106-50.3. Definitions.

106-50.4. Registration of brands and licensing of manufacturers and contractors.

106-50.5. Labeling.

106-50.6. Inspection fees.

Sec.
106-50.7. Sampling, inspection and testing.
106-50.8. Plant food deficiency.
106-50.9. Determination and publication of commercial values.
106-50.10. Minimum plant food content.
106-50.11. Grade list.
106-50.12. False or misleading statements.
106-50.13. Grade-tonnage reports.
106-50.14. Publication of information concerning fertilizers.
106-50.15. Rules, regulations and standards.
106-50.16. Short weight.
106-50.17. Cancellation of registration.
106-50.18. "Stop-sale," etc., orders.
106-50.19. Seizure, condemnation and sale.
106-50.20. Punishment for violations.
106-50.21. Sales or exchanges between manufacturers.
106-50.22. Appeals from assessments and orders of Commissioner.

Article 3.

Fertilizer Laboratories.

106-51. Certification of fertilizer laboratories.

Article 4.

Insecticides and Fungicides.

106-52 to 106-65. [Repealed.]

Article 4A.

Insecticide, Fungicide and Rodenticide Act of 1947.

106-65.1 to 106-65.12. [Repealed.]

Article 4B.

Aircraft Application of Pesticides.

106-65.13 to 106-65.21. [Repealed.]

Article 4C.

Structural Pest Control Act.

106-65.22. Title.
106-65.23. Structural Pest Control Division of Department of Agriculture created; Director; Structural Pest Control Committee created; appointment; terms; quorum.
106-65.24. Definitions.
106-65.25. Phases of structural pest control; license required; exceptions.
106-65.26. Qualifications of applicants for license.
106-65.27. Examination of applicants; fee; license not transferable.
106-65.28. Revocation or suspension of license.
106-65.29. Rules and regulations.
106-65.30. Inspectors; inspections and reports of violations; designation of resident agent.

Sec.
106-65.31. Annual license fee; registration of servicemen, salesmen and estimators; identification cards.
106-65.32. Proceedings and hearings under Article; record of hearings and judgments; certified copy of revocation of license sent to clerk of superior court.
106-65.33. Violation of Article or rules and regulations of Committee a misdemeanor.
106-65.34, 106-65.35. [Repealed.]
106-65.36. Reciprocity; intergovernmental cooperation.
106-65.37 to 106-65.41. [Reserved.]

Article 4D.

North Carolina Biological Organism Act.

106-65.42. Short title.
106-65.43. Purpose.
106-65.44. Definitions.
106-65.45. Authority of the Board to adopt regulations.
106-65.46. Commissioner of Agriculture to enforce Article; further authority of Board.
106-65.47. Authority under other statutes not abrogated; memoranda of understanding.
106-65.48. Criminal penalties; violation of law or regulations.
106-65.49. Article not applicable in certain cases.

Article 5.

Seed Cotton and Peanuts.

106-66. Sale of seed cotton or peanuts.
106-67. Traveling seed cotton buyers must report; failure a misdemeanor.

Article 5A.

Marketing of Farmers Stock Peanuts.

106-67.1. Purpose of Article.
106-67.2. Licenses to buy peanuts required; purchases for seed excepted.
106-67.3. Issuance of license; fee; effective period; use of fees collected.
106-67.4. Advisory Committee.
106-67.5. False certificates, etc.; false representations.
106-67.6. Inspections and investigations by Commissioner.
106-67.7. Rules and regulations.
106-67.8. Penalty; suspension of license.

Article 6.

Cottonseed Meal.

106-68. Cottonseed meal defined; inspection tax.
106-69. Bags to be branded with specified particulars.
106-70. Grades and standards established.
106-71. Rules to enforce statute; misdemeanor.

Sec.
106-72. Sales without tag; misuse of tag; penalty; forfeiture.
106-73. Sales contrary to Article a misdemeanor.
106-74. Forfeiture for unauthorized sale; release from forfeiture.
106-75. Method of seizure and sale on forfeiture.
106-76. Collection and analysis of samples.
106-77. Sales below guaranteed quality; duties of Commissioner.
106-78. Adulteration prohibited.

Article 7.

Pulverized Limestone and Marl.

106-79. Board of Agriculture authorized to make and sell lime to farmers.
106-80. Convict labor authorized.

Article 8.

Sale, etc., of Agricultural Liming Material, etc.

106-81. Regulation of sale, etc., of agricultural liming material, etc.
106-82. Registration of brands by manufacturers and vendors.
106-83. Labeling.
106-84. Registration and tonnage fees; tags showing payment; reporting system; license certificates.
106-85. Report of sales.
106-86. Administration; inspections, sampling and analysis.
106-87. Deficiencies; refunds to consumers.
106-88. Violations and penalties.
106-89. Certified analysis as evidence.
106-90. Revocation of licenses; seizure of materials.
106-91. Regulations and standards.
106-92. Construction of Article.

Article 9.

Commercial Feedingstuffs.

106-93 to 106-110. [Repealed.]

Article 10.

Mixed Feed Oats.

106-111. Unlawful to sell mixed feed oats unless ground.

Article 11.

Stock and Poultry Tonics.

106-112. Application and affidavit for registration.
106-113. Registration fee.
106-114. Sale of unregistered tonics a misdemeanor.
106-115. Notice of violation charged; hearing before Commissioner.
Sec.
106-116. Issuance of "stop-sale" orders by Commissioner; confiscation or sale of products.
106-117. Prosecution of violations.
106-118. Certificate of analyst as evidence.
106-119. Purpose of Article.

Article 12.

Food, Drugs and Cosmetics.

106-120. Title of Article.
106-121. Definitions and general consideration.
106-122. Certain acts prohibited.
106-123. Injunctions restraining violations.
106-124. Violations made misdemeanor.
106-125. Detention of product or article suspected of being adulterated or misbranded.
106-126. Prosecutions of violations.
106-127. Report of minor violations in discretion of Commissioner.
106-128. Establishment of reasonable standards of quality by Board of Agriculture.
106-129. Foods deemed to be adulterated.
106-130. Foods deemed misbranded.
106-131. Permits governing manufacture of foods subject to contamination with microorganisms.
106-132. Regulations by Board of Agriculture as to use of deleterious substances.
106-133. Drugs deemed to be adulterated.
106-134. Drugs deemed misbranded.
106-135. Regulations for sale of new drugs.
106-136. Cosmetics deemed adulterated.
106-137. Cosmetics deemed misbranded.
106-138. False advertising.
106-139. Regulations by Board of Agriculture.
106-140. Further powers of Commissioner of Agriculture for enforcement of Article.
106-141. Appointment of inspectors.
106-142. Publication of reports of judgments, decrees, etc.
106-143. Article construed supplementary.
106-144. Exemptions.
106-145. Effective date.

Article 13.

Canned Dog Foods.

106-146 to 106-158. [Repealed.]

Article 14.

State Inspection of Slaughterhouses.

106-159. Application for permit.
106-160. Investigation of sanitary conditions; issuance of permit.

Sec.
106-161. Municipalities; inspection of meats.
106-162. Fees for inspection.
106-163. Inspection conducted by veterinarian.
106-164. Number of permit to identify meats; revocation of permit.
106-165. Carcasses marked when inspected.
106-166. Rules and regulations for inspection; power of Commissioner.
106-167. Failure of butchers to keep record misdemeanor.
106-168. Local: Sales of calves for veal.

Article 14A.

Licensing and Regulation of Rendering Plants and Rendering Operations.

106-168.1. Definitions.
106-168.2. License required.
106-168.3. Exemptions.
106-168.4. Application for license.
106-168.5. Duties of Commissioner upon receipt of application; inspection committee.
106-168.6. Inspection by committee; certificate of specific findings.
106-168.7. Issuance of license.
106-168.8. Minimum standards for conducting rendering operations.
106-168.9. Transportation by licensee.
106-168.10. Disposal of diseased animals.
106-168.11. Authority of agents of licensee.
106-168.12. Commissioner authorized to adopt rules and regulations.
106-168.13. Effect of failure to comply.
106-168.14. Collectors subject to certain provisions.
106-168.15. Violation a misdemeanor.

Article 15.

Inspection of Meat and Meat Products by Counties and Cities.

106-169. Inspection; meat stamped as approved or condemned.
106-170. Fees for inspection.
106-171. Veterinary not available; who to inspect.
106-172. Collection of fees; remuneration of inspector.
106-173. Slaughterhouses, etc., under federal inspection, exempt from provisions of State inspection laws.

Article 15A.

Meat Grading Law.

106-173.1. Short title.
106-173.2. Definitions.
106-173.3. Program inaugurated.
106-173.4. Program shall be voluntary.
106-173.5. Issuance of plant or distributor's permits.
106-173.6. Revocation of plant or distributor's permit.
Sec.
106-173.7. Grader's permits.
106-173.8. Revocation of grader's permit.
106-173.9. Supervision of program.
106-173.10. Grades.
106-173.11. All meat to be stamped.
106-173.12. Roller stamps to be rented.
106-173.13. Roller stamps, contents of.
106-173.14. Reports by plants or distributors.
106-173.15. Fees.
106-173.16. Rules and regulations; violation of Article or regulations a misdemeanor.

Article 16.

Bottling Plants for Soft Drinks.

106-174. Specifications of places of manufacture and sale.
106-175. Soft drink defined.
106-176. Establishment and equipment kept clean; containers sterilized.
106-177. Protection from contamination.
106-178. Refuse removed daily.
106-179. Syrup room screened.
106-180. Washroom and toilet.
106-181. Use of deleterious substances prohibited.
106-181.1. Labeling.
106-182. Enforcement by Commissioner of Agriculture; inspectors; obstruction a misdemeanor.
106-183. Violation of Article a misdemeanor.
106-184. Bottler's inspection fee.
106-184.1. Department of Agriculture authority.

Article 17.

Marketing and Branding Farm Products.

106-185. Establishment of standard packages, etc., authorized.
106-186. Power to employ agents and assistants.
106-187. Board of Agriculture to investigate marketing of farm products.
106-188. Promulgation of standards for receptacles, etc.
106-189. Sale and receptacles of standardized products must conform to requirements.
106-189.1. Apples marked as to grade; penalty.
106-189.2. Sale of immature apples.
106-190. Inspectors or graders authorized; revocation of license.
106-191. Appeal from classification.
106-192. Certificate of grade prima facie evidence.
106-193. Unwholesome products not classified; health officer notified.
106-194. Inspection and sampling of farm products authorized.
106-195. Rules and regulations; how prescribed.
106-196. Violation of Article or regulations a misdemeanor.

Article 18.

Shipper's Name on Receptacles.

Sec.
106-197. Shipping fruit or vegetables not having grower's or shipper's name stamped on receptacle a misdemeanor.

Article 19.

Trademark for Standardized Farm Products.

106-198. Adoption, design and copyright of trademark, etc.
106-199. Regulation of use of trademark.
106-200. License for use of trademark.
106-201. Licensing of providers of approved designs; furnishing list of growers, etc.
106-202. Violation made misdemeanor.

Article 20.

Standard Weight of Flour and Meal.

106-203 to 106-209. [Repealed.]

Article 21.

Artificially Bleached Flour.

106-210. Collection and analysis of samples; publication of results.
106-211. Entry to secure samples.
106-212. Commissioner to notify district attorney of violations and certify facts.
106-213. Label for artificially bleached flour.
106-214. Statement required to be filed before sale.
106-215. Inspection fee for registering brands.
106-216. Violation of Article a misdemeanor.
106-217. Forfeiture for unauthorized sale; release from forfeiture.
106-218. Seller to furnish samples on payment.
106-219. Refusing samples or obstructing Article a misdemeanor.

Article 21A.

Enrichment of Flour, Bread, Cornmeal and Grits.

106-219.1. Title of Article.
106-219.2. Definitions.
106-219.3. Required vitamins and minerals.
106-219.4. Products exempted.
106-219.5. Enforcement by Commissioner.
106-219.6. Board authorized to make regulations; hearings.
106-219.7. Violation a misdemeanor.
106-219.8. Application of Article 12.
106-219.9. Exemptions from Article.

Article 22.

Inspection of Bakeries.

Sec.
106-220. Sanitary condition of rooms; drainage; toilets.
106-221. Tables, shelves and implements; refuse; sleeping rooms.
106-222. Employees; sitting or lying on tables; cleanliness.
106-223. Use of tobacco.
106-224. Ingredients and materials.
106-225. Adulterants; stale products; infections.
106-225.1. Bakery products containing souvenirs, trinkets, etc., which may endanger consumers.
106-225.2. New bags or other new containers required for grain cereal products.
106-225.3. Unlawful sale of bread, rolls or buns.
106-226. Department of Agriculture to enforce law; examination of plant and products.
106-227. Closing of plant; report of violation of Article to district attorney.
106-228. Regulations; establishment; violation.
106-229. Inspection fee.
106-230. Violation of Article a misdemeanor.
106-231. Inspectors.
106-232. Article supplemental to municipal ordinances.

Article 23.

Oleomargarine.

106-233. Definitions; singular or plural.
106-234, 106-235. [Repealed.]
106-236. Display of signs.
106-237. Enforcement of Article; revocation of license.
106-238. Penalties.

Article 24.

Excise Tax on Certain Oleomargarines.

106-239. Tax imposed; rules and regulations; penalties; disposition of proceeds.

Article 25.

North Carolina Egg Law.

106-240 to 106-245.12. [Repealed.]

Article 25A.

North Carolina Egg Law.

106-245.13. Short title; scope; rule of construction.
106-245.14. Definitions.
106-245.15. Designation of grade and class on containers required; conformity with designation; exemption.
106-245.16. Standards, grades and weight classes.
106-245.17. Stop-sale orders.
106-245.18. Container labeling.

Sec.
106-245.19. Invoices.
106-245.20. Advertisements.
106-245.21. Rules and regulations.
106-245.22. Sanitation.
106-245.23. Power of Commissioner.
106-245.24. Penalties for violations; enjoining violations; venue.
106-245.25. Warnings in lieu of criminal prosecutions.
106-245.26. Remedies cumulative.
106-245.27. Persons punishable as principals.
106-245.28. Act of agent as that of principal.

Article 26.

Inspection of Ice Cream Plants, Creameries, and Cheese Factories.

106-246. Cleanliness and sanitation required; washrooms and toilets, living and sleeping rooms; animals.
106-247. Cleaning and sterilization of vessels and utensils.
106-248. Purity of products.
106-249. Receivers of products to clean utensils before return.
106-250. Correct tests of butterfat; tests by Board of Agriculture.
106-251. Department of Agriculture to enforce law; examinations.
106-252. Closure of plants for violation of Article; certificate to district attorney of district.
106-253. Standards of purity and sanitation; regulating trade or brand names of frozen or semifrozen desserts.
106-254. Inspection fees; wholesalers; retailers and cheese factories.
106-255. Violation of Article a misdemeanor; punishment.

Article 27.

Records of Purchases of Milk Products.

106-256. Annual reports to Dairy Division by creameries, milk-distributing plants, etc.
106-257. Records of purchases of cream.
106-258. Individual plant records treated as confidential.
106-259. Failure to comply with provisions of Article made misdemeanor.

Article 28.

Records and Reports of Milk Distributors and Processors.

106-260. "Milk" defined.
106-261. Reports to Commissioner of Agriculture as to milk purchased and sold.
106-262. Powers of Commissioner of Agriculture.

Sec.
106-263. Distribution of milk in classification higher than that in which purchased.
106-264. Inspections and investigations by Commissioner.
106-265. Failure to file reports, etc., made unlawful.
106-266. Violation made misdemeanor.

Article 28A.

Regulation of Milk Brought into North Carolina from Other States.

106-266.1. Requirements to be complied with by out-of-state shippers of milk or cream.
106-266.2. Requirements and standards for distributors in this State distributing imported milk or cream.
106-266.3. Power to make rules and regulations.
106-266.4. Penalty for violation.
106-266.5. Exemption clause.

Article 28B.

Regulation of Production, Distribution, etc., of Milk and Cream.

106-266.6. Definitions.
106-266.7. Milk Commission continued; membership; chairman; compensation; quorum; cooperation of other agencies; official acts; meetings; principal office.
106-266.8. Powers of Commission.
106-266.9. Distributors to be licensed; prices and practices of distributors regulated.
106-266.10. Licenses for distributors and subdistributors.
106-266.11. Annual budget of Commission; collection of monthly assessments.
106-266.12. Milk Commission Account; deductions by distributor from funds owed to producer.
106-266.13. Injunctive relief.
106-266.14. Penalties.
106-266.15. Appeals.
106-266.16. Saving clause.
106-266.17. Marketing agreements not to be deemed illegal or in restraint of trade; conflicting laws.
106-266.18. Limitations upon power of Commission.
106-266.19. Sale below cost to injure or destroy competition prohibited.
106-266.20, 106-266.21. [Repealed.]

Article 29.

Inspection, Grading and Testing Milk and Dairy Products.

106-267. Inspection, grading and testing dairy products.

Sec.
106-267.1. License required; fee; term of license; examination required.
106-267.2. Rules and regulations.
106-267.3. Revocation of license; hearing.
106-267.4. Representative average sample; misdemeanor, what deemed.
106-267.5. Standard Babcock testing glassware; scales and weights.
106-268. Definitions; enforcement of Article.
106-268.1. Penalties.

Article 30.

Board of Crop Seed Improvement.

106-269. Creation and purpose.
106-270. Board membership.
106-271. Powers of Board.
106-272. Cooperation of other departments with Board; rules and regulations; fees for certification.
106-273. North Carolina Crop Improvement Association.
106-274. Certification of crop seeds.
106-275. False certification of purebred crop seeds made misdemeanor.
106-276. Supervision of certification of crop seeds.

Article 31.

North Carolina Seed Law.

106-277. Purpose.
106-277.1. Short title.
106-277.2. Definitions.
106-277.3. Label or tag requirements generally.
106-277.4. Labels for treated seeds; coloring of seeds treated with poisonous substance.
106-277.5. Labels for agricultural seeds.
106-277.6. Labels for vegetable seeds in containers of one pound or less.
106-277.7. Labels for vegetable seeds in containers of more than one pound.
106-277.8. Responsibility for presence of labels.
106-277.9. Prohibitions.
106-277.10. Exemptions.
106-277.11. Disclaimers, nonwarranties and limited warranties.
106-277.12. Records.
106-277.13. Tolerances to be established and used in enforcement.
106-277.14. Administration.
106-277.15. Rules, regulations and standards.
106-277.16. Seed-testing facilities.
106-277.17. Varieties or hybrids; registration; testing; prohibiting sale if inferior, misrepresented or unsuitable.
106-277.18. Registration and licensing of dealers.
106-277.19. Revocation or refusal of license for cause; hearing; appeal.
Sec.
106-277.20. Right of entry for purposes of inspection; duty of vendors.
106-277.21. Sampling, inspecting and testing; notice of violations.
106-277.22. Stop-sale orders; penalty covering expenses; appeal.
106-277.23. Notice of violations; hearings, prosecutions or warnings.
106-277.24. Penalty for violations.
106-277.25. Seizure and disposition of seeds violating Article.
106-277.26. Publication of test results and other information.
106-277.27. Cooperation with United States Department of Agriculture.
106-277.28. Fees for tags, stamps and licenses.
106-277.29. Investigation committee; appointment; duties; authority.
106-278 to 106-284.4. [Reserved.]

Article 31A.

Seed Potato Law.

106-284.5 to 106-284.13. [Repealed.]

Article 31B.

Vegetable Plant Law.

106-284.14. Title.
106-284.15. Purpose of Article.
106-284.16. Definitions.
106-284.17. Unlawful to sell plants not up to standard and not appropriately tagged or labeled.
106-284.18. Rules and regulations.
106-284.19. Inspection; interference with inspectors; "stop-sale" notice.
106-284.20. Interference with Commissioner, etc., or other violation a misdemeanor; penalties.
106-284.21. Authority to permit sale of substandard plants.
106-284.22. When Article not applicable.
106-284.23 to 106-284.29. [Reserved.]

Article 31C.

North Carolina Commercial Feed Law of 1973.

106-284.30. Title.
106-284.31. Purpose.
106-284.32. Enforcing official.
106-284.33. Definitions of words and terms.
106-284.34. Registration.
106-284.35. Labeling.
106-284.36. Bag weights.
106-284.37. Misbranding.
106-284.38. Adulteration.
106-284.39. Prohibited acts.
106-284.40. Inspection fees and reports.
106-284.41. Rules and regulations.
106-284.42. Inspection, sampling, and analysis.

Sec.
106-284.43. Detained commercial feeds.
106-284.44. Penalties; enforcement of Article; judicial review; confidentiality of information.
106-284.45. Cooperation with other entities.
106-284.46. Publication.

Article 32.

Linseed Oil.

106-285. Inspection and analysis authorized.
106-286. Raw and boiled linseed oil defined.
106-287. Adulterated linseed oil defined.
106-288. Sale of prohibited products; statement required of dealer.
106-289. Drying agents; label to state name and percentage.
106-290. Compounds, imitations, and substitutes regulated.
106-291. Containers to be marked with specified particulars.
106-292. Entry for samples authorized.
106-293. Refusing samples or obstructing enforcement of Article forbidden.
106-294. Violations of Article a misdemeanor.
106-295. Forfeiture for unauthorized offer; disposal of proceeds.
106-296. Commissioner to notify district attorney of violations and certify facts.
106-297. District attorney to prosecute.
106-298. Inspection tax.
106-299. Tax tags.
106-300. Refilling containers and misuse of tags prohibited.
106-301. Rules to enforce Article; misdemeanor.
106-302. Dealer released by guaranty of wholesaler.

Article 33.

Adulterated Turpentine.

106-303. Sale of adulterated turpentine misdemeanor.

Article 34.

Animal Diseases.

Part 1. Quarantine and Miscellaneous Provisions.

106-304. Proclamation of livestock and poultry quarantine.
106-305. Proclamation of infected feedstuff quarantine.
106-306. Rules to enforce quarantine.
106-307. Violation of proclamation or rules.
106-307.1. Serums, vaccines, etc., for control of animal diseases.
106-307.2. Reports of infectious disease in livestock and poultry to State Veterinarian.
106-307.3. Quarantine of infected or inoculated livestock.
106-307.4. Quarantine of inoculated poultry.
106-307.5. Livestock and poultry brought into State.
106-307.6. Violation made misdemeanor.
106-307.7. Diseased livestock running at large.

Part 2. Foot and Mouth Disease; Rinderpest; Fowl Pest; Newcastle Disease.

106-308. Appropriation to combat animal and fowl diseases.
106-309. Disposition of surplus funds.

Part 3. Hog Cholera.

106-310. Burial of hogs dying natural death required.
106-311. Hogs affected with cholera to be segregated and confined.
106-312. Shipping hogs from cholera-infected territory.
106-313. Price of serum to be fixed.
106-314. Manufacture and use of serum and virus restricted.
106-315. Written permit from State Veterinarian for sale, use or distribution of hog-cholera virus, etc.
106-316. Counties authorized to purchase and supply serum.
106-316.1. Purpose of §§ 106-316.1 to 106-316.5.
106-316.2. Use of virulent hog-cholera virus prohibited without permit; virulent hog-cholera virus defined; use of modified live virus vaccines.
106-316.3. Unlawful to import hogs inoculated with virulent virus; exceptions for immediate slaughter; health certificate and permit required.
106-316.4. Penalties for violation of §§ 106-316.1 to 106-316.5.
106-316.5. [Repealed.]
106-317. Regulation of the transportation or importation of hogs and other livestock into State.
106-318. Issuance of health certificates for swine and livestock; inspection.
106-319. Burial of hogs and other livestock dying in transit.
106-320. [Repealed.]
106-321. Penalties for violation.
106-322. Effect of §§ 106-317 to 106-322.
106-322.1. State-federal hog-cholera cooperative agreements; establishment of hog-cholera eradication areas.
106-322.2. Destruction of swine affected with or exposed to hog cholera; indemnity payments.
106-322.3. When indemnity payments not to be made.

Part 4. Compensation for Killing Diseased Animals.

106-323. State to pay part of value of animals killed on account of disease; pur-

Sec.
chase by State of animals exposed to certain diseases.
106-324. Appraisal of cattle affected with Bang's disease and tuberculosis.
106-325. Appraisal of animals affected with glanders; report.
106-326. Report of appraisal of cattle affected with Bang's disease and tuberculosis to State Veterinarian; contents.
106-327. Marketing of cattle affected with Bang's disease and tuberculosis.
106-328. Report on salvage.
106-329. Compensation when killing ordered.
106-330. Ownership of destroyed animals; outstanding liens.
106-331. State not to pay for feed of animals ordered killed.
106-332. Disinfection of stockyards by owners.
106-333. Payments made only on certain conditions.
106-334. Owner's claim for indemnity supported by reports.
106-335. State Veterinarian to carry out provisions of Article; how moneys paid out.

Part 5. Tuberculosis.

106-336. Animals reacting to tuberculin test.
106-337. Animals to be branded.
106-338. Quarantine; removal or sale; sale and use of milk.
106-339. Seller liable in civil action.
106-340. Responsibility of owner of premises where sale is made.
106-341. Sale of tuberculin.
106-342. Notice to owner of suspected animals; quarantine.
106-343. Appropriations by counties; elections.
106-344. Petition for election if commissioners refuse cooperation; order; effect.
106-345. Importation of cattle.
106-346. Amount of appropriation.
106-347. Qualified veterinarian.
106-348. Rules and regulations.
106-349. Violation of law a misdemeanor.
106-350. Sale of tubercular animal a felony.

Part 6. Cattle Tick.

106-351. Systematic dipping of cattle or horses.
106-352. Counties not embraced in quarantine zones.
106-353. Dipping vats; counties to provide; cost.
106-354. Local State inspectors; commissioned as quarantine inspectors; salaries, etc.
106-355. Enforcement of compliance with law.
106-356. Owners of stock to have same dipped; supervision of dipping; dipping period.
106-357. Service of notice.
106-358. Cattle placed in quarantine; dipping at expense of owner.
Sec.
106-359. Expense of dipping as lien on animals; enforcement of lien.
106-360. Duty of sheriff.
106-361. Rules and regulations.
106-362. Penalty for violation.
106-363. Damaging dipping vats a felony.

Part 7. Rabies.

106-364. Definitions.
106-365. Vaccination of all dogs.
106-366. Appointment and qualifications of rabies inspectors; preference to veterinarians.
106-367. Time of vaccination.
106-368. Publication of notice of date of vaccination; duty of owner.
106-369. Vaccine and cost; metal tag to be worn by dog; certificate of vaccination.
106-370. Notice to sheriff of each county and his duty to assist.
106-371. Canvass of dogs not wearing metal tags; notice to owners to have dogs vaccinated; killing of ownerless dogs.
106-372. Fee for vaccination; penalty for late vaccination.
106-372.1. [Repealed.]
106-373. Vaccination of dogs after vaccination period.
106-374. Vaccination and confinement of dogs brought into State.
106-375. Quarantine of districts infected with rabies.
106-376. Killing stray dogs in quarantine districts.
106-377. Infected dogs to be killed; protection of dogs vaccinated.
106-378. Confinement of suspected animals.
106-379. Animals having rabies to be killed; heads ordered to a laboratory.
106-380. Notice to local health director when person bitten; confinement of dog; reports by physicians.
106-381. Confinement or leashing of vicious animals.
106-382. Administration of law in cities and larger towns; cooperation with sheriffs.
106-383. Regulation of content of vaccine; doses.
106-384. Law declared additional to other laws on subject.
106-385. Violation made misdemeanor.
106-386. Present dog tax limited.
106-387. Disposition of funds.

Part 8. Brucellosis (Bang's Disease).

106-388. Animals affected with, or exposed to, brucellosis declared subject to quarantine, etc.
106-389. "Brucellosis" defined; program for vaccination; sale, etc., of vaccine;

Sec.
cooperation with the United States Department of Agriculture.
106-390. Blood sample testing; diseased animals to be branded and quarantined; sale; removal of identification, etc.
106-391. Civil liability of vendors.
106-392. Sales by nonresidents.
106-393. Duties of State Veterinarian; quarantine of animals; required testing.
106-394. Cooperation of county boards of commissioners.
106-395. Compulsory testing.
106-396. Authority to promulgate and enforce rules and regulations.
106-397. Violation made misdemeanor.
106-398. Punishment for sale of animals known to be infected, or under quarantine.
106-399. [Repealed.]

Part 9. Control of Livestock Diseases.

106-400. Permit from State Veterinarian for sale, transportation, etc., of animals affected with disease.
106-401. State Veterinarian authorized to quarantine.
106-401.1. Inspection and quarantine of poultry.
106-402. Confinement and isolation of diseased animals required.
106-403. Disposition of dead domesticated animals.
106-404. Animals affected with glanders to be killed.
106-405. Violation made misdemeanor.

Part 10. Feeding Garbage to Swine.

106-405.1. Definitions.
106-405.2. Permit for feeding garbage to swine.
106-405.3. Application for permit.
106-405.4. Revocation of permits.
106-405.5. Sanitation.
106-405.6. Cooking or other treatment.
106-405.7. Inspection and investigation; maintenance of records.
106-405.8. Enforcement of Part; rules and regulations.
106-405.9. Penalties.
106-405.10 to 106-405.14. [Reserved.]

Part 11. Equine Infectious Anemia.

106-405.15. "Equine infectious anemia" defined.
106-405.16. Animals infected with or exposed to equine infectious anemia declared subject to quarantine.
106-405.17. Authority to promulgate and enforce rules and regulations.
106-405.18. Implementation of control and eradication program.
106-405.19. Violation made misdemeanor.

Article 35.

Public Livestock Markets.

Sec.
106-406. Permits from Commissioner of Agriculture for operation of public livestock markets; application therefor; hearing on application.
106-407. Bonds required of operators; exemption of certain market operations.
106-407.1. North Carolina Public Livestock Market Advisory Board created; appointment; membership; duties.
106-407.2. Revocation of permit by Board of Agriculture; restraining order for violations.
106-408. Marketing facilities prescribed; records of purchases and sales; time of sales; notice.
106-408.1. Market operation fees.
106-409. Removal of cattle from market for slaughter and nonslaughter purposes; identification; permit needed.
106-410. Removal of swine from market for slaughter and nonslaughter purposes; identification; permit needed; resale for feeding or breeding; out-of-state shipment.
106-411. Regulation of use of livestock removed from market; swine shipped out of State.
106-412. Admission of animals to markets; quarantine of diseased animals; sale restricted; regulation of trucks, etc.
106-413. Sale, etc., of certain diseased animals restricted; application of Article; sales by farmers.
106-414. Transportation, sale, etc., of diseased livestock; burden of proving health; movement to laboratory; removal of identification.
106-415. Cost of tests, serums, etc.
106-416. Rules and regulations.
106-417. Violation made misdemeanor; responsibility for health, etc., of animals.
106-418. Exemption from health provisions.

Article 35A.

North Carolina Livestock Prompt Pay Law.

106-418.1. Short title.
106-418.2. Legislative intent and purpose.
106-418.3. Definitions.
106-418.4. Duties of Commissioner.
106-418.5. Collection of payment.
106-418.6. Action upon failure of payment.
106-418.7. Authority of Board of Agriculture, North Carolina Public Livestock Advisory Board and the Commissioner.

Article 35B.

Livestock Dealer Licensing Act.

Sec.
106-418.8. Definitions.
106-418.9. Exemptions.
106-418.10. Prohibited conduct.
106-418.11. Licenses.
106-418.12. Hearings.
106-418.13. Maintenance of records.
106-418.14. Penalties.
106-418.15. Short title.

Article 36.

Plant Pests.

106-419. Plant pest defined.
106-419.1. Plants, plant products and other objects exposed to plant pests.
106-420. Authority of Board of Agriculture to adopt regulations.
106-420.1. Agreements against plant pests.
106-421. Permitting uncontrolled existence of plant pests; nuisance; method of abatement.
106-422. Agents of Board; inspection.
106-423. Nursery inspection; nursery dealer's certificate; narcissus inspection.
106-423.1. Criminal penalties; violation of laws or regulations.

Article 37.

Cotton Grading.

106-424. Federal standards recognized.
106-425. Duplicates of federal samples may be used.
106-426. Expert graders to be employed; cooperation with United States Department of Agriculture.
106-427. County commissioners to cooperate.
106-428. Grading done at owner's request; grades as evidence.
106-429. Grader's certificate admissible as evidence.

Article 38.

Marketing Cotton and Other Agricultural Commodities.

106-429.1. Short title.
106-430. Purpose of law.
106-431. Definition of "other agricultural commodities."
106-432. Board of Agriculture administers law, makes rules, appoints superintendent.
106-432.1. When employer-employee relationship deemed to exist; when person deemed employee, agent or officer of State, Board, superintendent or system.
106-433. Employment of officers and assistants; licensing private facilities as components of warehouse system; licensing employees of private facilities.
106-434. Bonds of superintendent, State employees and private warehouse facilities and their employees.
106-435. Fund for support of system; collection and investment.
106-436. Registration of gins; gin records and reports; payment of tax.
106-437. Qualifications of warehouse manager.
106-438. Warehouse superintendent to accept federal standards.
106-439. Leasing and licensing of property by superintendent; manner of operating warehouse system.
106-440. Power of superintendent to sue or to be sued; liability for tort.
106-441. Grading and weighing of products; negotiable receipts; authentication of receipts.
106-442. Transfer of receipt; issuance and effect of receipt.
106-443. Issuance of false receipt a felony; punishment.
106-444. Delivery of cotton without receipt or failure to cancel receipt.
106-445. Rules for issuance of duplicate receipts.
106-446. State not liable on warehouse debts; levy on cotton or levy on grain and soybeans levied if loss is sustained.
106-447. Insurance of cotton; premiums; lien for insurance and storage charges.
106-448. Superintendent to negotiate loans on receipts and sell cotton for owners.
106-449. Construction of 1941 amendment.
106-450. Compliance with United States warehouse law.
106-450.1. Bond of State warehouse system under United States Warehouse Act.
106-451. Numbering of cotton bales by public ginneries; public gin defined.
106-451.1. Purchasers of cotton to keep records of purchases.

Article 39.

Leaf Tobacco Warehouses.

106-452. Maximum warehouse charges.
106-453. Oath of tobacco weigher; duty of weigher to furnish list of number and weight of baskets weighed.
106-454. Warehouse proprietor, etc., to render bill of charges; penalty.
106-455. Tobacco purchases to be paid for by cash or check to order.

Article 40.

Leaf Tobacco Sales.

Sec.
106-456. Accounts of warehouse sales required.
106-457. Monthly reports to Commissioner; results classified.
106-458. Commissioner to keep record and publish in Bulletin.
106-459. Penalty for failure to report sales.
106-460. Commissioner to publish names of warehouses failing to report sales; certificate as evidence.
106-461. Nested, shingled or overhung tobacco.
106-462. Sale under name other than that of true owner prohibited.
106-463. Allowance for weight of baskets and trucks.
106-464. Violation made misdemeanor.
106-465. Organization and membership of tobacco boards of trade; rules and regulations; fire insurance and extended coverage required; price fixing prohibited.

Article 41.

Dealers in Scrap Tobacco.

106-466. Application for license; amount of tax; exceptions.
106-467. Report to Commissioner of Agriculture each month.
106-468. Display of license; no fixed place of business; agents, etc.; licensing of processors, redriers, etc.
106-469. Violation made misdemeanor.
106-470. Exemptions.

Article 42.

Production, Sale, Marketing and Distribution of Tobacco.

106-471 to 106-489. [Repealed.]

Article 43.

Combines and Power Threshers.

106-490 to 106-495. [Repealed.]
105-495.1. Reports of crops harvested by means of combines or power threshers.
106-495.2. Reports of sales of combines or power threshers.

Article 44.

Unfair Practices by Handlers of Fruits and Vegetables.

106-496. Protection against unfair trade practices.
106-497. Permits required.
106-498. Bond required.
106-499. Contracts between handlers and producers; approval of Commissioner.
106-500. Additional powers of Commissioner to enforce Article.
Sec.
106-501. Violation of Article or rules made misdemeanor.

Article 45.

Agricultural Societies and Fairs.

Part 1. State Fair.

106-502. Land set apart.
106-503. Board of Agriculture to operate fair.
106-503.1. Board authorized to construct and finance facilities and improvements for fair.
106-504. Lands dedicated by State may be repossessed at will of General Assembly.

Part 2. County Societies.

106-505. Incorporation; powers and term of existence.
106-506. Organization; officers; new members.
106-507. Exhibits exempt from State and county taxes.
106-508. Funds to be used in paying premiums.
106-509. Annual statements to State Treasurer.
106-510. Publication of statements required.
106-511. Records to be kept; may be read in evidence.

Part 3. Protection and Regulation of Fairs.

106-512. Lien against licensees' property to secure charge.
106-513. Notice of sale to owner.
106-514. Unlawful entry on grounds a misdemeanor.
106-515. Assisting unlawful entry on grounds a misdemeanor.
106-516. Vendors and exhibitors near fairs to pay license.
106-516.1. Carnivals and similar amusements not to operate without permit.
106-517. Application for license to county commissioners.
106-518. Unlicensed vending, etc., near fairs a misdemeanor.
106-519. Commissioners may refuse to license shows within five miles.
106-520. Local aid to agricultural, animal, and poultry exhibits.

Part 4. Supervision of Fairs.

106-520.1. Definition.
106-520.2. Use of "fair" in name of exhibition.
106-520.3. Commissioner of Agriculture to regulate.
106-520.4. Local supervision of fairs.
106-520.5. Reports.
106-520.6. Premiums and premium lists supplemented.
106-520.7. Violations made misdemeanor.

Article 46.

Erosion Equipment.

Sec.

106-521. Counties authorized to provide farmers with erosion equipment.
106-522. Application for assistance.
106-523. Investigation and extending relief.
106-524. Purchase of equipment and furnishing to farmers; notes and security from applicants; rental contracts; guarantee of payment.
106-525. Guarantee of payment where equipment purchased by federal agencies.
106-526. Expense of counties extending relief made lien on premises of applicant.
106-527. Counties excepted.

Article 47.

State Marketing Authority.

106-528. State policy and purpose of Article.
106-529. State Marketing Authority created; members and officers; commodity advisers; meetings and expenses.
106-530. Powers of Authority.
106-531. Discrimination prohibited; restriction on use of funds.
106-532. Fiscal year; annual report to Governor.
106-533. Application of revenues from operation of warehouses.
106-534. Exemption from taxes and assessments.

Article 48.

Relief of Potato Farmers.

106-535. Guaranty of minimum price to growers of Irish potatoes under share planting system.
106-536. Additional net profits due grower not affected.
106-537. Minimum payments only compensation for labor and use of equipment, land, etc.
106-538. Time of payments; Article not applicable to landlord-tenant contracts.

Article 49.

Poultry; Hatcheries; Chick Dealers.

106-539. National poultry and turkey improvement plans.
106-540. Rules and regulations.
106-541. Definitions.
106-542. Hatcheries, chick dealers and others to obtain permit to operate.
106-543. Requirements of national poultry and turkey improvement plans must be met.
106-544. Shipments from out of State.
106-545. False advertising.
106-546. Notice describing grade of chicks to be posted.

Sec.

106-547. Records to be kept.
106-548. Fees; quarantine; compulsory testing.
106-549. Violation a misdemeanor.

Article 49A.

Voluntary Inspection of Poultry.

106-549.1. Short title.
106-549.2. Definitions.
106-549.3. Authority to enter into voluntary agreements providing for inspection.
106-549.4. Rules and regulations.
106-549.5. Who shall be eligible for this service.
106-549.6. Cost of inspection.
106-549.7. Payment of inspection costs.
106-549.8. Plant number.
106-549.9. Identifying officially inspected poultry, poultry products, and edible parts thereof.
106-549.10. Inspection in official plants.
106-549.11. Supervision of inspection program.
106-549.12. Who shall inspect poultry.
106-549.13. Withdrawal of service.
106-549.14. Exemptions.

Article 49B.

Meat Inspection Requirements; Adulteration and Misbranding.

106-549.15. Definitions.
106-549.16. Statement of purpose.
106-549.17. Inspection before slaughter.
106-549.18. Inspection; stamping carcass.
106-549.19. Application of Article; place of inspection.
106-549.20. Inspectors' access to businesses.
106-549.21. Stamping container or covering; regulation of container.
106-549.22. Rules and regulations of Board.
106-549.23. Prohibited slaughter, sale, and transportation.
106-549.24. Prohibited acts regarding certificate.
106-549.25. Slaughter, sale and transportation of equine carcasses.
106-549.26. Inspection of establishment; bribery of or malfeasance of inspector.
106-549.27. Exemptions from Article.
106-549.28. Regulation of storage of meat.

Article 49C.

Federal and State Cooperation as to Meat Inspection; Implementation of Inspection.

106-549.29. North Carolina Department of Agriculture responsible for cooperation.
106-549.29:1. [Repealed.]
106-549.30. Refusal of Commissioner to inspect and certify meat.
106-549.31. Enforcement against uninspected meat.

Sec.
106-549.32. Enforcement against condemned meat; appeal.
106-549.33. Jurisdiction of superior court.
106-549.34. Interference with inspector.
106-549.35. Punishment for violation.
106-549.36. Gathering information; reports required; use of subpoena.
106-549.37. Jurisdiction coterminous with federal law.
106-549.38. Rules and regulations of State Department of Agriculture.
106-549.39. Hours of inspection; overtime work; fees.
106-549.40 to 106-549.48. [Repealed.]

Article 49D.
Poultry Products Inspection Act.

106-549.49. Short title.
106-549.50. Purpose and policy.
106-549.51. Definitions.
106-549.51A. Article applicable to domesticated rabbits.
106-549.52. State and federal cooperation.
106-549.53. Inspection; condemnation of adulterated poultry.
106-549.54. Sanitation of premises; regulations.
106-549.55. Labeling standards; false and misleading labels.
106-549.56. Prohibited acts.
106-549.57. No poultry in violation of Article processed.
106-549.58. Poultry not for human consumption; records; registration.
106-549.59. Punishment for violations; carriers exempt; interference with enforcement.
106-549.60. Notice of violation.
106-549.61. Regulations authorized.
106-549.62. Intrastate operations exemptions.
106-549.63. Commissioner may limit entry of products to establishments.
106-549.64. Refusal of inspection services; hearing; appeal.
106-549.65. Product detained if in violation.
106-549.66. Seizure or condemnation proceedings.
106-549.67. Superior court jurisdiction; proceedings in name of State.
106-549.68. Powers of Commissioner; subpoenas; mandamus; self-incrimination; penalties.
106-549.68A. Article applicable to those regulated by federal act.
106-549.69. Inspection costs.

Article 49E.

Disposal of Dead Diseased Poultry at Commercial Farms.

106-549.70. Disposal pit or incinerator.
106-549.71. Penalty for violation.

Article 49F.
Biological Residues in Animals.

Sec.
106-549.81. Definitions.
106-549.82. Detention or quarantine; lifting quarantine; burden of proof.
106-549.83. Appellate review; order pending appeal; bond.
106-549.84. Movement of contaminated animals forbidden.
106-549.85. Inspection of animals, records, etc.
106-549.86. Investigation to discover violation.
106-549.87. Promulgation of regulation.
106-549.88. Penalties.

Article 50.

Promotion of Use and Sale of Agricultural Products.

106-550. Policy as to promotion of use of, and markets for, farm products; tobacco excluded.
106-551. Federal Agricultural Marketing Act.
106-552. Associations, activity, etc., deemed not in restraint of trade.
106-553. Policy as to referenda, assessments, etc., for promoting use and sale of farm products.
106-554. Application to Board of Agriculture for authorization of referendum.
106-555. Action by Board on application.
106-556. Conduct of referendum among growers and producers on question of assessments.
106-557. Notice of referendum; statement of amount, basis and purpose of assessment; maximum assessment.
106-557.1. Ballot by mail.
106-558. Management of referendum; expenses.
106-559. Basis of referendum; eligibility for participation; question submitted; special provisions for North Carolina Cotton Promotion Association.
106-560. Effect of more than one-third vote against assessment.
106-561. Effect of two-thirds vote for assessment.
106-562. Regulations as to referendum; notice to farm organizations and county agents.
106-563. Distribution of ballots; arrangements for holding referendum; declaration of results.
106-564. Collection of assessments; custody and use of funds.
106-564.1. Alternate method for collection of assessments.
106-564.2. Further alternative method for collection of assessments.
106-564.3. Alternative method for collection of assessments relating to cattle.

Sec.
106-565. Subsequent referendum.
106-566. Referendum as to continuance of assessments approved at prior referendum.
106-567. Rights of farmers dissatisfied with assessments; time for demanding refund.
106-568. Publication of financial statement by treasurer of agency; bond required.

Article 50A.

Promotion of Agricultural Research and Dissemination of Findings.

106-568.1. Policy as to joint action of farmers.
106-568.2. Policy as to referendum and assessment.
106-568.3 Action of Board of Agriculture on petition for referendum.
106-568.4. By whom referendum to be managed; announcement.
106-568.5. When assessment shall and shall not be levied.
106-568.6. Determination and notice of date, area, hours, voting places, etc.
106-568.7. Preparation and distribution of ballots; poll holders; canvass and announcement of results.
106-568.8. Collection and disposition of assessment; report of receipts and disbursements; audit.
106-568.9. Refunds to farmers.
106-568.10. Subsequent referenda; continuation of assessment.
106-568.11. Effect of more than one-third vote against assessment.
106-568.12. Effect of two-thirds vote in favor of assessment.

Article 50B.

North Carolina Agricultural Hall of Fame.

106-568.13. North Carolina Agricultural Hall of Fame created.
106-568.14. Board of directors; membership; compensation.
106-568.15. Terms of directors.
106-568.16. Admission of candidates to Hall of Fame.
106-568.17. Acceptance of gifts, bequests and awards; display thereof.

Article 50C.

Promotion of Sale and Use of Tobacco.

106-568.18. Policy as to joint action of farmers.
106-568.19. Policy as to referendum on question of annual assessment.
106-568.20. Referendum in 1961 on assessment for next three years.
106-568.21. Effect of more than one-third vote against assessment in 1961 referendum.
106-568.22. Effect of two-thirds vote for assessment in 1961 referendum.
106-568.23. Regulations as to 1961 referendum; notice to farm organizations and county agents.
106-568.24. Distribution of ballots; arrangements for holding 1961 referendum; declaration of results.
106-568.25. Question at 1961 referendum.
106-568.26. Collection of assessments; custody and use of funds.
106-568.27. Required affirmative vote of directors of Tobacco Associates, Incorporated.
106-568.28. Right of farmers dissatisfied with assessments; time for demanding refund.
106-568.29. Subsequent referendum after defeat of assessment.
106-568.30. Referendum as to continuance of assessments approved at prior referendum.
106-568.31. Filing and publication of financial statement by treasurer of Tobacco Associates, Incorporated.
106-568.32. Levy of assessment for 1959, 1960 and 1961 authorized.
106-568.33. Effect of Article on prior acts.
106-568.34. Alternate method for levy of assessment.

Article 51.

Inspection and Regulation of Sale of Antifreeze Substances and Preparations.

106-569. Definitions.
106-570. Adulteration; what constitutes.
106-571. Misbranding; what constitutes.
106-572. Inspection, analysis and permit for sale of antifreeze.
106-573. Article to be administered by the Commissioner of Agriculture.
106-574. Rules and regulations.
106-575. Gasoline and oil inspectors may be designated as agents of the Commissioner.
106-576. Submission of formula or chemical contents of antifreeze to the Commissioner.
106-577. Penalties for violation.
106-578. Appropriation for enforcement of Article.
106-579. Copy of analysis in evidence.

Article 52.

Agricultural Development.

106-580. Short title.
106-581. Intent and purpose.
106-582. Counties authorized to utilize facilities to promote programs.

Sec.
106-583. Policy of State; cooperation of departments and agencies with Agricultural Extension Service.
106-584. Maximum use of existing research facilities.
106-585. Appropriations by counties; funds made available by Congress.
106-586. Authority granted by Article supplementary.
106-587. Local appropriations.
106-588 to 106-600. [Reserved.]

Article 53.

Grain Dealers.

106-601. Definitions.
106-602. License required.
106-603. Application for license or renewal thereof.
106-604. License fee; bond required; exemption.
106-605. Execution, terms and form of bond; action on bond; investigation of complaints.
106-606. Posting of license; decal on truck, etc.
106-607. Renewal of license.
106-608. Disposition of fees.
106-609. Records to be kept by dealers.
106-610. Grounds for refusal, suspension or revocation of license.
106-611. Procedure for refusal, suspension or revocation of license.
106-612. Commissioner's authority to investigate.
106-613. Rules and regulations.
106-614. Violation a misdemeanor.
106-615. Operation without license unlawful; injunction for violation.

Article 1.

Department of Agriculture.

Part 1. Board of Agriculture.

§ 106-1. Constitutional provision. — The General Assembly shall establish a Department of Agriculture, Immigration, and Statistics, under such regulations as may best promote the agricultural interests of the State, and shall enact laws for the adequate protection and encouragement of sheep hubandry. (Const., Art. III, s. 17; Rev., s. 3930; C. S., s. 4666.)

This section is identical with the former constitutional provisions, Art. III, § 17, which was not self-executing, but simply directed the legislature to establish the Department of Agriculture, Immigration, and Statistics. Cunningham v. Sprinkle, 124 N.C. 638, 33 S.E. 138 (1899).

Cited in Nantahala Power & Light Co. v. Clay County, 213 N.C. 698, 197 S.E. 603 (1938).

§ 106-2. Department of Agriculture, Immigration, and Statistics established; Board of Agriculture, membership, terms of office, etc. — The Department of Agriculture, Immigration, and Statistics is created and established and shall be under the control of the Commissioner of Agriculture, with the consent and advice of a board to be styled "The Board of Agriculture." The Board of Agriculture shall consist of the Commissioner of Agriculture, who shall be ex officio a member and chairman thereof and shall preside at all meetings, and of 10 other members from the State at large, so distributed as to reasonably represent the different sections and agriculture of the State. In the appointment of the members of the Board the Governor shall also take into consideration the different agricultural interests of the State, and shall appoint one member who shall be a practical tobacco farmer to represent the tobacco farming interest, one who shall be a practical cotton grower to represent the cotton interest, one who shall be a practical truck farmer or general farmer to represent the truck and general farming interest, one who shall be a practical dairy farmer to represent the dairy and livestock interest of the State, one who shall be a practical poultryman to represent the poultry interest of the State, one who shall be a practical peanut grower to represent the peanut interests, one who shall be a man experienced in marketing to represent the marketing of products of the State. The members of such Board shall be appointed by the Governor by and with the consent of the Senate, when the terms of the incumbents respectively expire. The term of office of such members shall be six

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years and until their successors are duly appointed and qualified. The terms of office of the five members constituting the present Board of Agriculture shall continue for the time for which they were appointed. In making appointments for the enlarged Board of Agriculture, the Governor shall make the appointments so that the term of three members will be for two years, three for four and four for six years. Thereafter the appointments shall be made for six years. Vacancies in such Board shall be filled by the Governor for the unexpired term. The Commissioner of Agriculture and the members of the Board of Agriculture shall be practical farmers engaged in their profession. (Code, s. 2184; 1901, c. 479, ss. 2, 4; Rev., s. 3931; 1907, c. 497, s. 1; C. S., s. 4667; 1931, c. 360, s. 1; 1937, c. 174.)

State Government Reorganization. — The Board of Agriculture was transferred by § 143A-59, enacted by Session Laws, 1971, c. 864.

Appointment of Members. — Members of the State Board of Agriculture are not constitutional officers, but being of legislative creation, are within the power of legislative appointment. They are not exclusively, nor of necessity, within the power of executive appointment. Cunningham v. Sprinkle, 124 N.C. 638, 33 S.E. 138 (1899).

Actions against Board. — The Board of Agriculture is a department of the State government and an action cannot be maintained against it without the consent of the State. Chemical Co. v. Board of Agriculture, 111 N.C. 135, 15 S.E. 1032 (1892).

Cited in Turner v. Gastonia City Bd. of Educ., 250 N.C. 456, 109 S.E.2d 211 (1959).

§ 106-3. Compensation of members. — Each member of the Board of Agriculture shall receive compensation for each day he attends a session of the Board and for each day necessarily spent in traveling to and from his residence. He shall also receive necessary traveling expenses for the distance to and from Raleigh. When attending any committee meeting each member of the committee, other than the chairman, shall receive the same per diem rate and mileage as is fixed for attending meetings of the Board. (1901, c. 479, s. 3; Rev., s. 3932; 1919, c. 247, s. 10½; C. S., s. 4668.)

Cross Reference. — See current appropriations act for per diem rate.

§ 106-4. Meetings of Board. — The Board of Agriculture, herein established, hereafter called "the Board," shall meet for the transaction of business in the City of Raleigh at least twice a year, and oftener, if called by the Commissioner of Agriculture. (1901, c. 479, s. 3; Rev., s. 3935; C. S., s. 4669; 1921, c. 24; 1929, c. 252; 1931, c. 360, s. 2.)

§ 106-5. Executive committee and finance committee. — The Board shall elect from its members an executive committee of four, of which committee the Commissioner shall also be ex officio a member and chairman. The Board shall elect a finance committee of five from its numbers. The Board shall prescribe the powers and duties of these committees, and the Commissioner may call meetings of these committees whenever in his opinion such meetings are desirable for the good of the Department. (Rev., s. 3936; 1907, c. 876, s. 1; C. S., s. 4670.)

§ 106-6. Moneys received to be paid into State treasury. — All moneys arising from tonnage charges on fertilizers and fertilizing materials, inspection taxes on cottonseed meal and concentrated commercial feedingstuff, and from the sale of any property seized and condemned under the provisions of this Chapter, and all other moneys which may come into the hands of the Commissioner of Agriculture or other officer, member or employee of the Department of Agriculture by virtue of this Chapter, shall be paid into the State

treasury by the Commissioner of Agriculture, and shall be kept on a separate account by the Treasurer as a fund for the exclusive use and benefit of the Department of Agriculture. (1876-7, c. 174, s. 22; Code, s. 2208; Rev., s. 3937; C. S., s. 4671.)

§ 106-7. Power of Board. — The Board shall be empowered to hold in trust and exercise control over donations or bequests made to it for promoting the interests or purposes of the Department. (1901, c. 497, s. 3; Rev., s. 3933; C. S., s. 4672.)

§ 106-8. May require bonds of officers. — Bonds may be required for such amounts as the Board may think best for all officers of the Department who handle funds. (1901, c. 479, s. 14; Rev., s. 3934; C. S., s. 4673.)

§ 106-9. Annual report. — The Board shall annually make a report to the Governor, to be transmitted by him to the General Assembly the years when in session, of its work and matters relating thereto, which report shall contain a statement of all receipts and expenditures and the objects for which expended. (1907, c. 876, s. 2; C. S., s. 4674.)

§ 106-9.1. Investment of surplus in agriculture fund in interest-bearing government securities. — The Board of Agriculture, with the approval of the Governor and Council of State, is hereby authorized and empowered whenever in their discretion there is a cash surplus in the agriculture fund in excess of the amount required to meet the current needs and demands of the Department, to invest said surplus funds in bonds or certificates of indebtedness of the United States of America or bonds, notes or other obligations of any agency or instrumentality of the United States of America, when the payment of principal and interest thereof is fully guaranteed by the United States of America, or in bonds or notes of the State of North Carolina. The said funds shall be invested in such obligations as in the judgment of the Board of Agriculture, the Governor, and the Council of State may be readily converted into money. The interest and revenue received from such investment or profits realized from the sale thereof shall become a part of the agriculture fund and be likewise invested. (1945, c. 999.)

Part 1A. Collection and Refund of Fees and Taxes.

§ 106-9.2. Records and reports required of persons paying fees or taxes to Commissioner or Department; examination of records; determination of amount due by Commissioner in case of noncompliance. — (a) Every person paying fees or taxes to the Commissioner of Agriculture or to the Department of Agriculture under the provisions of this Chapter shall keep such records as the Commissioner may prescribe to indicate accurately the fees or taxes due to the Commissioner or Department, and such records shall be preserved for a period of three years, and shall at all times during the business hours of the day be subject to inspection by the Commissioner or his deputies or such other agents as may be duly authorized by the Commissioner. Any person failing to comply with or violating any of the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be fined or imprisoned in the discretion of the court.

(b) It shall be the duty of the Commissioner of Agriculture, by competent auditors, to have the books and records of every person paying fees or taxes to the Commissioner or Department examined at least once each year to determine if such persons are keeping complete records as provided by this section, and to determine if correct reports have been made to the Commissioner or Department covering the total amount of fees or taxes due by such persons.

(c) If any person shall fail, neglect or refuse to keep such records or to make such reports or pay fees or taxes due as required, and within the time provided in this Chapter, the Commissioner shall immediately inform himself as best he may as to the matters and things required to be set forth in such records and reports, and from such information as he may be able to obtain, determine and fix the amount of fees or taxes due the State from such delinquent person for the period covering the delinquency. The Commissioner shall proceed immediately to collect the fees or taxes due the State, including any penalties and interest thereon, in the manner provided in this Article. (1963, c. 458.)

§ 106-9.3. Procedure for assessment of fees and taxes. — (a) If the Commissioner of Agriculture discovers from the examination of any report filed by a taxpayer or otherwise that any fee or tax or additional fee or tax is due from any taxpayer, he shall give notice to the taxpayer in writing of the kind and amount of fee or tax which is due and of his intent to assess the same, which notice shall contain advice to the effect that unless application for a rehearing is made within the time specified in subsection (c), the proposed assessment will become conclusive and final.

If the Commissioner is unable to obtain from the taxpayer adequate and reliable information upon which to base such assessment, the assessment may be made upon the basis of the best information available and, subject to the provisions hereinafter made, such assessment shall be deemed correct.

(b) The notice required to be given in subsection (a) may be delivered to the taxpayer by an agent of the Commissioner or may be sent by mail to the last known address of the taxpayer and such notice will be deemed to have been received in due course of the mail unless the taxpayer shall make an affidavit to the contrary within 90 days after such notice is mailed, in which event the taxpayer shall be heard by the Commissioner in all respects as if he had made timely application.

(c) Any taxpayer who objects to a proposed assessment of fee or tax or additional fee or tax shall be entitled to a hearing before the Commissioner of Agriculture, provided application therefor is made in writing within 30 days after the mailing or delivery of the notice required by subsection (a). If application for a hearing is made in due time, the Commissioner of Agriculture shall set a time and place for the hearing and after considering the taxpayer's objections shall give written notice of his decision to the taxpayer. The amount of fee or tax or additional fee or tax due from the taxpayer as finally determined by the Commissioner shall thereupon be assessed and upon assessment shall become immediately due and collectible.

Provided, the taxpayer may request the Commissioner at any time within 30 days of notice of such proposed assessment for a written statement, or transcript, of the information and the evidence upon which the proposed assessment is based, and the Commissioner of Agriculture shall furnish such statement, or transcript, to the taxpayer. Provided, further, after request by the taxpayer for such written statement, or transcript, the taxpayer shall have 30 days after the receipt of the same from the Commissioner of Agriculture to apply in writing for such hearing, explaining in detail his objections to such proposed assessment. If no request for such hearing is so made, such proposed assessment shall be final and conclusive.

(d) If no timely application for a hearing is made within 30 days after notice of a proposed assessment of fee or tax or additional fee or tax is given pursuant to subsection (a), such proposed fee or tax or additional fee or tax assessment shall become final without further notice and shall be immediately due and collectible.

(e) Where a proper report has been filed by a taxpayer and in the absence of fraud, the Commissioner of Agriculture shall assess any fee or tax or additional fee or tax due from the taxpayer within three years after the date upon which

such report is filed or within three years after the date upon which such report was required by law to be filed, whichever is the later. If no report has been filed, and in the absence of fraud, any fee or tax or additional fee or tax due from a taxpayer may be assessed at any time within five years after the date upon which such report was required by law to be filed. In the event a false and fraudulent report has been filed or there has been an attempt in any manner to fraudulently defeat or evade a fee or tax, any fee or tax or additional fee or tax due from the taxpayer may be assessed at any time.

(f) Except as hereinafter provided in subsection (g), the Commissioner of Agriculture shall have no authority to assess any fee or tax or additional fee or tax under this section until the notice required by subsection (a) shall have been given and the period within which an application for a hearing may be filed has expired, or if a timely application for a hearing is filed, until written notice of the Commissioner's decision has been given to the taxpayer, provided, however that if the notice required by subsection (a) shall be mailed or delivered within the limitation prescribed in subsection (e), such limitation shall be deemed to have been complied with and the proceeding may be carried forward to its conclusion.

(g) Notwithstanding any other provision of this section, the Commissioner of Agriculture shall have authority at any time within the applicable period of limitations to proceed at once to assess any fee or tax or additional fee or tax which he finds is due from a taxpayer if, in his opinion, the collection of such fee or tax is in jeopardy and immediate assessment is necessary in order to protect the interest of the State, provided, however, that if an assessment is made pursuant to the authority set forth in this subsection before the notice required by subsection (a) is given, such assessment shall not be valid unless the notice required by subsection (a) shall be given within 30 days afer the date of such assessment.

(h) All assessments of fees or taxes or additional fees or taxes (exclusive of penalties assessed thereon) shall bear interest at the rate of one half of one percent (0.5%) per month or fraction thereof from the time said fees or taxes or additional fees or taxes were due to have been paid until paid. (1963, c. 458.)

§ 106-9.4. Collection of deliquent fees and taxes.—(a) If any fee or tax imposed by this Chapter, or any other fee or tax levied by the State and payable to the Commissioner of Agriculture or the Department of Agriculture, or any portion of such fee or tax, be not paid within 30 days after the same becomes due and payable, and after the same has been assessed, the Commissioner of Agriculture shall issue an order under his hand and official seal, directed to the sheriff of any county of the State commanding him to levy upon and sell the real and personal property of the taxpayer found within his county for the payment of the amount thereof, with the added penalties, additional taxes, interest, and cost of executing the same, and to return to the Commissioner of Agriculture the money collected by virtue thereof within a time to be therein specified, not less than 60 days from the date of the order. The said sheriff shall, thereupon, proceed upon the same in all respects with like effect and in the same manner prescribed by law in respect to executions issued against property upon judgments of a court of record, and shall be entitled to the same fees for his services in executing the order, to be collected in the same manner.

(b) Bank deposits, rents, salaries, wages, and all other choses in action or property incapable of manual levy or delivery, hereinafter called the intangible, belonging, owing, or to become due to any taxpayer subject to any of the provisions of this Chapter, or which has been transferred by such taxpayer under circumstances which would permit it to be levied upon if it were tangible, shall be subject to attachment or garnishment as herein provided, and the person owing said intangible, matured or unmatured, or having same in his possession or control, hereinafter called the garnishee, shall become liable for all sums due

by the taxpayer under this Chapter to the extent of the amount of the intangible belonging, owing, or to become due to the taxpayer subject to the setoff of any matured or unmatured indebtedness of the taxpayer to the garnishee. To effect such attachment or garnishment the Commissioner of Agriculture shall serve or cause to be served upon the taxpayer and the garnishee a notice as hereinafter provided, which notice may be served by any deputy or employee of the Commissioner of Agriculture or by any officer having authority to serve summonses. Said notice shall show:

(1) The name of the taxpayer and his address, if known;

(2) The nature and amount of the fee or tax, and the interest and penalties thereon, and the year or years for which the same were levied or assessed, and

(3) Shall be accompanied by a copy of this subsection, and thereupon the procedure shall be as follows:

If the garnishee has no defense to offer or no setoff against the taxpayer, he shall, within 10 days after service of said notice, answer the same by sending to the Commissioner of Agriculture by registered mail a statement to that effect, and if the amount due or belonging to the taxpayer is then due or subject to his demand, it shall be remitted to the Commissioner with said statement, but if said amount is to mature in the future, the statement shall set forth that fact and the same shall be paid to the Commissioner upon maturity, and any payment by the garnishee hereunder shall be a complete extinguishment of any liability therefor on his part to the taxpayer. If the garnishee has any defense or setoff, he shall state the same in writing under oath, and, within 10 days after service of said notice, shall send two copies of said statement to the Commissioner by registered mail; if the Commissioner admits such defense or setoff, he shall so advise the garnishee in writing within 10 days after receipt of such statement and the attachment or garnishment shall thereupon be discharged to the amount required by such defense or setoff, and any amount attached or garnished hereunder which is not affected by such defense or setoff shall be remitted to the Commissioner as above provided in cases where the garnishee has no defense or setoff, and with like effect. If the Commissioner shall not admit the defense or setoff, he shall set forth in writing his objections thereto and shall send a copy thereof to the garnishee within 10 days after receipt of the garnishee's statement, or within such further time as may be agreed on by the garnishee, and at the same time he shall file a copy of said notice, a copy of the garnishee's statement, and a copy of his objections thereto in the superior court of the county where the garnishee resides or does business where the issues made shall be tried as in civil actions.

If judgment is entered in favor of the Commissioner of Agriculture by default or after hearing, the garnishee shall become liable for the fee or taxes, interest and penalties due by the taxpayer to the extent of the amount over and above any defense or setoff of the garnishee belonging, owing, or to become due to the taxpayer, but payments shall not be required from amounts which are to become due to the taxpayer until the maturity thereof, nor shall more than ten percent (10%) of any taxpayer's salary or wages be required to be paid hereunder in any one month. The garnishee may satisfy said judgment upon paying said amount, and if he fails to do so, execution may issue as provided by law. From any judgment or order entered upon such hearing either the Commissioner of Agriculture or the garnishee may appeal as provided by law. If, before or after judgment, adequate security is filed for the payment of said taxes, interest, penalties, and costs, the attachment or garnisment may be released or execution stayed pending appeal, but the final judgment shall be paid or enforced as above provided. The taxpayer's sole remedies to question his liability for said fees or taxes, interest, and penalties shall be those provided in this Article, as now or hereinafter amended or supplemented. If any third person claims any intangible

attached or garnished hereunder and his lawful right thereto, or to any part thereof, is shown to the Commissioner, he shall discharge the attachment or garnishment to the extent necessary to protect such right, and if such right is asserted after the filing of said copies as aforesaid, it may be established by interpleader as now or hereafter provided by the General Statutes in cases of attachment and garnishment. In case such third party has no notice of proceedings hereunder, he shall have the right to file his petition under oath with the Commissioner at any time within 12 months after said intangible is paid to him and if the Commissioner finds that such party is lawfully entitled thereto or to any part thereof, he shall pay the same to such party as provided for refunds by G.S. 105-407 and if such payment is denied, said party may appeal from the determination of the Commissioner to the Superior Court of Wake County or to the superior court of the county wherein he resides or does business. The intangibles of a taxpayer shall be paid or collected hereunder only to the extent necessary to satisfy said fees or taxes, interest, penalties, and costs. Except as hereinafter set forth, the remedy provided in this section shall not be resorted to unless a warrant for collection or execution against the taxpayer has been returned unsatisfied: Provided, however, if the Commissioner is of opinion that the only effective remedy is that herein provided, it shall not be necessary that a warrant for collection or execution shall be first returned unsatisfied, and in no case shall it be a defense to the remedy herein provided that a warrant for collection or execution has not been first returned unsatisfied: Provided, however, that no salary or wage at the rate of less than two hundred dollars ($200.00) per month, whether paid weekly or monthly, shall be attached or garnished under the provisions of this section.

(c) In addition to the remedy herein provided, the Commissioner of Agriculture is authorized and empowered to make a certificate setting forth the essential particulars relating to the said fee or tax, including the amount thereof, the date when the same was due and payable, the person, firm, or corporation chargeable therewith, and the nature of the fee or tax, and under his hand and seal transmit the same to the clerk of the superior court of any county in which the deliquent taxpayer resides or has property; whereupon, it shall be the duty of the clerk of the superior court of the county to docket the said certificate and index the same on the cross index of judgments, and execution may issue thereon with the same force and effect as an execution upon any other judgment of the superior court; said tax shall become a lien on realty only from the date of the docketing of such certificate in the office of the clerk of the superior court and in personalty only from the date of the levy on such personalty and upon execution thereon no homestead or personal property exemption shall be allowed.

(d) The remedies herein given are cumulative and in addition to all other remedies provided by law for the collection of said fees and taxes. (1963, c. 458.)

Editor's Note. — Section 105-407, referred to in the last paragraph of subsection (b), was transferred to § 105-267.1 by Session Laws 1971, c. 806, s. 2.

§ 106-9.5. Refund of overpayment. — If the Commissioner of Agriculture discovers from the examination of any report, or otherwise, that any taxpayer has overpaid the correct amount of any fee or tax (including penalties, interest and costs, if any), such overpayment shall be refunded to the taxpayer within 60 days after it is ascertained together with interest thereon at the rate of six percent (6%) per annum: Provided, that interest on any such refund shall be computed from a date 90 days after date tax was originally paid by the taxpayer. Provided, further, that demand for such refund is made by the taxpayer within three years from the date of such overpayment or the due date of the report, whichever is later. (1963, c. 458.)

§ 106-9.6. Suits to prevent collection prohibited; payment under protest and recovery of fee or tax so paid. — No court of this State shall entertain a suit of any kind brought for the purpose of preventing the collection of any fee or tax imposed in this Chapter. Whenever a person shall have a valid defense to the enforcement of the collection of a fee or tax assessed or charged against him or his property, such person shall pay such fee or tax to the proper officer, and notify such officer in writing that he pays the same under protest. Such payment shall be without prejudice to any defense or rights he may have in the premises, and he may, at any time within 30 days after such payment, demand the same in writing from the Commissioner of Agriculture; and if the same shall not be refunded within 90 days thereafter, may sue such official in the courts of the State for the amount so demanded. Such suit must be brought in the Superior Court of Wake County, or in the county in which the taxpayer resides. (1963, c. 458.)

Part 2. Commissioner of Agriculture.

§ 106-10. Election; term; vacancy. — The Commissioner of Agriculture shall be elected at the general election for other State officers, shall be voted for on the same ballot with such officers, and his term of office shall be four years, and until his successor is elected and qualified. Any vacancy in the office of such Commissioner shall be filled by the Governor, the appointee to hold until the next regular election to the office and the qualification of his successor. (1901, c. 479, s. 4; Rev., s. 3938; C. S., s. 4675.)

§ 106-11. Salary of Commissioner of Agriculture. — The salary of the Commissioner of Agriculture shall be thirty-one thousand dollars ($31,000) a year, payable monthly. (1901, c. 479, s. 4; 1905, c. 529; Rev., s. 2749; 1907, c. 887, s. 1; 1913, c. 58; C. S., s. 3872; 1921, c. 25, s. 1; 1933, c. 282, s. 5; 1935, c. 293; 1937, c. 415; 1939, c. 338; 1943, c. 499, s. 1; 1947, c. 1041; 1949, c. 1278; 1953, c. 1, s. 2; 1957, c. 1; 1963, c. 1178, s. 4; 1967, c. 1130; c. 1237, s. 4; 1969, c. 1214, s. 4; 1971, c. 912, s. 4; 1973, c. 778, s. 4.)

Editor's Note. — The 1973 amendment increased the salary from $25,000 to $31,000.

§ 106-12. To appoint secretary and other officials. — The Commissioner of Agriculture shall appoint a secretary and prescribe his duties, and shall appoint such employees as may be necessary to the efficient prosecution of the duties of the Department of Agriculture. He shall, subject to the approval of a majority of the Board, appoint heads of divisions and their assistants. (1901, c. 479, s. 4; Rev., s. 3939; 1913, c. 202; C. S., s. 4676.)

§ 106-13. To investigate purchases, sources, and manufacture of fertilizer. — The Commissioner of Agriculture shall investigate all complaints made by purchasers of fertilizers, and render such services as he may be able in bringing about an adjustment and satisfactory settlement of such complaints. It shall be his duty to ascertain as near as may be the actual cost of blood tankage, fish scrap, nitrate of soda, cottonseed meal, and other materials from which ammonia or nitrogen is obtained; the cost of all phosphate rock, together with a description of the treatment with acids, the grinding and general manufacture of acid phosphate, and the actual cost thereof as near as may be, and to communicate with dealers, both in this country and in Germany, as to the cost of muriate of potash, kainit, and other sources of potash, and to publish the same in the Bulletin; but he shall not expose to the public the name of any manufacturer in this State who may give him information on this subject, nor shall he divulge any information concerning the private business of any corporation or company manufacturing fertilizers solely in this State: Provided, such corporation or

company is not a part or branch of any trust or combination. He shall also make and publish in every fertilizer bulletin a price list of the market value of all the materials of which fertilizers are made, and revise the same as often as may be necessary. (1901, c. 479, s. 4; Rev., s. 3940; C. S., s. 4677.)

§ 106-14. To establish regulations for transportation of livestock. — The Commissioner of Agriculture, by and with the consent and advice of the Board of Agriculture, shall promulgate and enforce such rules and regulations as may be necessary for the proper transporting of livestock by motor vehicle, and may require a permit for such vehicles if it becomes necessary in order to prevent the spread of animal diseases. This section shall not apply to any county having a local law providing for the vaccination of hogs against cholera. (1937, c. 427, ss. 1, 2.)

Part 3. Powers and Duties of Department and Board.

§ 106-15. Agricultural research station and branch stations. — The work of investigation in agriculture required in this Chapter may be designated by the Board of Agriculture as an agricultural research station, and the four research farms now in operation be and the same are hereby designated and established as branch research stations, to be conducted as at present under the auspices of the Board of Agriculture and out of its funds. (1907, c. 876, s. 5; C. S., s. 4682; 1955, c. 276, s. 1.)

§ 106-16. Purchase and sale of research farms; use of proceeds. — The Board of Agriculture is authorized to sell, at its discretion, any lands which the State may now own or may hereafter acquire for the purpose of conducting research farms. The Board is also authorized to purchase additional lands to be used for the purpose of conducting research farms at such place or places as in the discretion of the Board may seem expedient. No such sales or purchases shall be made except upon the approval of the Governor and Council of State upon the recommendation of the Advisory Budget Commission. (1909, c. 97; 1917, c. 45; C. S., s. 4683; 1953, c. 1337; 1955, c. 276, s. 2.)

§ 106-17. Acquisition of research farm. — The Department of Agriculture is hereby authorized and empowered to acquire by purchase, gift, donation, or lease, a tract or boundary of land of not less than 100 acres in the sand-hill section of North Carolina, and in northeastern North Carolina composed of the Counties of Camden, Chowan, Currituck, Gates, Pasquotank and Perquimans, to be developed and used as a "research farm" for the purposes of work in investigation in agriculture.

Such "research farm" when acquired and established shall be operated, managed and controlled as other "research farms" in the State. (1927, c. 182, ss. 1, 2; 1955, c. 276, s. 2.)

§ 106-18. Peanut research farm. — The Department of Agriculture is hereby authorized and directed to purchase, establish and operate a research farm in some suitable place in the peanut section of eastern North Carolina for the purpose of studying the growing of peanuts, looking toward the improvement of seed, fertilizer, the control of disease, through experiments, and such other matters pertaining to the growth and improvement of the quality of peanuts. The said research farm to be purchased and established in time for operation not later than January 1, 1938. In doing this work the Department of Agriculture is authorized to make such reasonable expenditures for establishing and operating such peanut research farm as may be necessary for its proper conduct and in the same way as is now being done for the other research farms in the State. The research farm shall be established, operated and controlled by the Department of Agriculture as the other research farms for the study of other farm crops. (1937, c. 218; 1955, c. 276, s. 2.)

§ 106-19. State Chemist; duties of office. — The Department of Agriculture shall employ an analyst or State Chemist skilled in agricultural chemistry, and such assistants as may be necessary. It shall be the duty of the State Chemist to analyze such fertilizers and products as may be required by this Department, and to aid as far as practicable in suppressing fraud in the sale of commercial fertilizers. He shall also, under the direction of the Department, analyze for citizens of the State such samples of ores, minerals, mineral and potable waters, soils, marls and phosphates as may be deemed by the Department of benefit to the development of the material interest of the State, when such samples are supplied under rules by the Department, and he shall carry on such other investigations as the Department may direct. He shall make regular reports to the Department of all analyses, assays, and experiments made, which shall be furnished when deemed needful to such newspapers as will publish the same. (1901, c. 479, s. 11; Rev., s. 3941; C. S., s. 4684.)

§ 106-20. Inoculating culture for leguminous crops. — The Board of Agriculture is hereby authorized to manufacture inoculating culture for leguminous crops and distribute it to the citizens of the State applying therefor at cost, the expense of manufacture and distribution to be paid for out of the receipts of the Department of Agriculture. (Ex. Sess. 1913, c. 43; C. S., s. 4685.)

§ 106-21. Timber conditions to be investigated and reported. — The Department of Agriculture shall investigate and report upon the conditions of the timber in North Carolina, and recommend such legislation as will promote the growth thereof and preserve the same. (1901, c. 479, s. 13; Rev., s. 3942; C. S., s. 4686.)

§ 106-22. Joint duties of Commissioner and Board. — The Commissioner of Agriculture, by and with the consent and advice of the Board of Agriculture shall:

(1) General. — Investigate and promote such subjects relating to the improvement of agriculture, the beneficial use of commercial fertilizers and composts, and for the inducement of immigration and capital as he may think proper; but he is especially charged:

(2) Commercial Fertilizers. — With such supervision of the trade in commercial fertilizers as will best protect the interests of the farmers, and shall report to district attorneys and to the General Assembly information as to the existence or formation of trusts or combinations in fertilizers or fertilizing materials which are or may be offered for sale in this State, whereby the interests of the farmers may be injuriously affected, and shall publish such information in the Bulletin of the Department;

(3) Cattle and Cattle Diseases. — With investigations adapted to promote the improvement of milk and beef cattle, and especially investigations relating to the diseases of cattle and other domestic animals, and shall publish and distribute from time to time information relative to any contagious diseases of stock, and suggest remedies therefor, and shall have power in such cases to quarantine the infected animals and to regulate the transportation of stock in this State, or from one section of it to another, and may cooperate with the United States Department of Agriculture in establishing and maintaining cattle districts or quarantine lines, to prevent the infection of cattle from splenic or Spanish fever. Any person willfully violating such regulations shall be liable in a civil action to any person injured, and for any and all damages resulting from such conduct, and shall also be guilty of a misdemeanor;

(4) Honey and Bee Industry. — With investigations adapted to promote the improvement of the honey and bee industry in this State, and especially investigations relating to the diseases of bees, and shall publish and

distribute from time to time information relative to such diseases, and such remedies therefor, and shall have power in such cases to quarantine the infected bees and to control or eradicate such infections and to regulate the transportation or importation into North Carolina from any other state or country of bees, honey, hives, or any apiary equipment, or from one section of the State to another, and may cooperate with the United States Department of Agriculture in establishing and maintaining quarantine lines or districts. The Commissioner of Agriculture, by and with the consent and advice of the Board of Agriculture, shall have power to make rules and regulations to carry out the provisions of this section; and in event of failure to comply with any such rules and regulations, the Commissioner of Agriculture or his duly authorized agent is authorized to confiscate and destroy any infected bees and equipment and any bees and/or used apiary equipment moved in violation of these regulations;

(5) Insect Pests. — With investigations relative to the ravages of insects and with the dissemination of such information as may be deemed essential for their abatement, and making regulations for destruction of such insects. The willful violation of any of such regulations by any person shall be a misdemeanor;

(6) New Agricultural Industries. — With investigations and experiments directed to the introduction and fostering of new agricultural industries, adapted to the various climates and soils of the State, especially the culture of truck and market gardens, the grape and other fruits;

(7) Drainage and Irrigation; Fertilizer Sources. — With the investigations of the subject of drainage and irrigation and publication of information as to the best methods of both, and what surfaces, soils, and locations may be most benefited by such improvements; also with the collection and publication of information in regard to localities, character, accessibility, cost, and modes of utilization of native mineral and domestic sources of fertilizers, including formulae for composting adapted to the different crops, soils, and materials;

(8) Farm fences. — With the collection of statistics relating to the subject of farm fences, with suggestions for diminishing their cost, and the conditions under which they may be dispensed with altogether;

(9) Sales of Fertilizers, Seeds, and Food Products. — With the enforcement and supervision of the laws which are or may be enacted in this State for the sale of commercial fertilizers, seeds and food products, with the authority to make regulations concerning the same;

(10) Inducement of Capital and Immigration. — With the inducement of capital and immigration by the dissemination of information relative to the advantages of soil and climate and to the natural resources and industrial opportunities offered in this State, by the keeping of a land registry and by the publication of descriptions of agricultural, mineral, forest, and trucking lands which may be offered the Department for sale; which publication shall be in tabulated form, setting forth the county, township, number of acres, names and addresses of owners, and such other information as may be needful in placing inquiring homeseekers in communication with landowners; and he shall publish a list of such inquiries in the Bulletin for the benefit of those who may have land for sale;

(11) Diversified Farming. — With such investigations as will best promote the improvement and extension of diversified farming, including the rotation of crops, the raising of home supplies, vegetables, fruits, stock, grasses, etc.;

(12) Farmers' Institutes. — With the holding of farmers' institutes in the several counties of the State, as frequently as may be deemed advisable, in order to instruct the people in improved methods in farming, in the beneficial use of fertilizers and composts, and to ascertain the wants and necessities of the various farming communities; and may collect the papers and addresses made at these institutes and publish the same in pamphlet form annually for distribution among the farmers of the State. He may secure such assistants as may be necessary or beneficial in holding such institutes;

(13) Publication of Bulletin. — The Commissioner shall publish bulletins which shall contain a list of the fertilizers and fertilizing materials registered for sale each year, the guaranteed constituents of each brand, reports of analyses of fertilizers, the dates of meeting and reports of farmers' institutes and similar societies, description of farm buildings suited to our climate and needs, reports of interesting experiments of farmers, and such other matters as may be deemed advisable. The Department may determine the number of bulletins which shall be issued each year;

(14) Reports to Legislature. — He shall transmit to the General Assembly at each session a report of the operations of the Department with suggestions of such legislation as may be deemed needful;

(15) State Museum. — He shall keep a museum or collection to illustrate the cultural and other resources and the natural history of the State. (1901, c. 479, s. 4; Rev., ss. 3294, 3724, 3944; 1917, c. 16; C. S., s. 4688; 1939, c. 173; 1973, c. 47, s. 2.)

Editor's Note. — The 1973 amendment substituted "district attorneys" for "solicitors" in subdivision (2).

State Government Reorganization. — The State Museum was transferred to the Department of Agriculture by § 143A-66, enacted by Session Laws 1971, c. 864.

Constitutionality. — Legislation of this character has been upheld by well considered decisions in this and other jurisdictions. Morgan v. Stewart, 144 N.C. 424, 57 S.E. 149 (1907).

The authority to make administrative rules is not a delegation of legislative power, and such rules do not become legislation, because violations thereof are punished as "public offenses." State v. Southern Ry., 141 N.C. 846, 54 S.E. 294 (1906).

Cattle and Cattle Diseases. — The State Board of Agriculture has authority to make and enforce regulations for the quarantine of cattle and to prevent their transportation in view of preventing the spreading of contagious diseases. And an owner permitting cattle to run at large in a no-fence county who willfully allows cattle to stray across the line is guilty of a violation of the act. State v. Garner, 158 N.C. 630, 74 S.E. 458 (1912).

The third subdivision of this section confers power upon the Commissioner to make regulations prohibiting the transportation of cattle. State v. Southern Ry., 141 N.C. 846, 54 S.E. 294 (1906).

The provision to get rid of the ticks on cattle and prevent infection is a reasonable and valid regulation. State v. Hodges, 180 N.C. 751, 105 S.E. 417 (1920).

Judicial Notice of Quarantined District. — Where the quarantine regulations of the United States Department of Agriculture, relating to the transportation of cattle, which were adopted by the State Board of Agriculture, provided that no cattle originating in the quarantined district as therein described should be moved into "that part of Burke south of the Catawba River," the court judicially knows that a shipment of cattle from Burlington to Morganton has been across the line fixed as a quarantine line. State v. Southern Ry., 141 N.C. 846, 54 S.E. 294 (1906).

Part 4. Cooperation of Federal and State Governments in Agricultural Work.

§ 106-23. Legislative assent to Adams Act for experiment station. — Legislative assent be and the same is hereby given to the purpose of an act of Congress approved March 16, 1906, entitled "An Act to provide for an increased annual appropriation for agricultural experiment stations, and regulating the

expenditure thereof," known as the Adams Act, and the money appropriated by this act be and the same is hereby accepted on the part of the State for the use of the agricultural experiment station, and the whole amount shall be used for the benefit of the said agricultural experiment station, in accordance with the act of Congress making appropriations for agricultural experiment stations and governing the expenditure thereof. (1907, c. 793; C. S., s. 4689.)

Part 5. Cooperation between Department and United States Department of Agriculture, and County Commissioners.

§ 106-24. Collection and publication of information relating to agriculture; cooperation. — The Department of Agriculture shall collect, compile, systematize, tabulate, and publish statistical information relating to agriculture. The said Department is authorized to cooperate with the United States Department of Agriculture and the several boards of county commissioners of the State, to accomplish the purpose of G.S. 106-24 to 106-26. (1921, c. 201, s. 1; C. S., s. 4689(a); 1941, c. 343.)

Cited in Nantahala Power & Light Co. v. Clay County, 213 N.C. 698, 197 S.E. 603 (1938).

§ 106-25. Department to furnish report books or forms for procuring and tabulating information; appointment and duties of persons collecting and compiling information; information confidential. — The said Department shall annually provide and submit report books or forms to the person appointed by the board of county commissioners of the several counties of the State to collect and compile the statistical information required by G.S. 106-24 to 106-26. The board of county commissioners may appoint any person to collect such information. The person so appointed shall serve at the will of the county commissioners and shall be paid such compensation for such services as may be deemed proper. Such report books or forms shall be furnished the person so appointed before he enters upon his duties. It shall be the duty of each person so appointed to fill out or cause to be filled out in the report books or forms, herein provided for and received by him, authentic information required to be tabulated therein, and, upon completion of such tabulation, he shall return and deliver the said books or forms to the board of county commissioners of his county, within 10 days after the time prescribed by law for securing the tax lists of his county. The person so appointed shall carefully check said books or forms for the purpose of determining whether or not at least ninety percent (90%) of the tracts of land of such county are acceptably reported on in such report books or forms. Upon the receipt of the report books or forms properly filled out in accordance with G.S. 106-24 to 106-26, the board of county commissioners of each county in the State shall, within 10 days after receipt thereof, inspect and transmit or deliver such report books or forms to the Department of Agriculture. The information required in G.S. 106-24 to 106-26 shall be held confidential by all persons having any connections therewith and by the Department of Agriculture. No information shall be required hereunder on land tracts consisting of less than three acres. (1921, c. 201, s. 2; C. S., s. 4689(b); 1941, c. 343; 1947, c. 540; 1949, c. 1273, s. 1; 1951, c. 1014, s. 1.)

§ 106-26. Compensation for making reports; examination of report books, etc., by Department of Agriculture. — In order to encourage maximum cooperation and efficiency, the Department of Agriculture shall pay to the county commissioners of the various counties of the State from appropriations made to the Department of Agriculture, the sum of forty cents (40¢) per acceptable report received by the Department of Agriculture in accordance with

the provisions of G.S. 106-24 to 106-26: Provided, however, that no such payment shall be made for any report from any township which does not cover acceptably at least ninety percent (90%) of the tracts of land within such townships. In all those cases where the report covers less than eighty percent (80%) of the tracts of land in a township, the Department of Agriculture shall withhold from the amount due the county for furnishing such reports the sum of forty cents (40¢) for each farm report shortage, and shall further deduct therefrom the sum of two dollars ($2.00) for each unauthenticated report. Upon request, all report books or forms which are not complete in accordance with the provisions of G.S. 106-24 to 106-26 shall be returned to the county board of commissioners or person charged with the duty of supervising or compiling the statistical survey information, in order that the same may be properly completed to comply with the provisions of this Part. (1921, c. 201, s. 3; C. S., s. 4689(c); 1941, c. 343; 1949, c. 1273, s. 2; 1951, c. 1014, s. 2; 1969, c. 796.)

§ 106-26.1. Cooperation of county farm and home demonstration agents and vocational teachers. — It shall be the duty of the county farm and home demonstration agents and vocational teachers to cooperate with the persons designated to obtain the information required by G.S. 106-25 and 106-26, and particularly to inform the farmers as to the advisability and necessity for obtaining the information necessary to carry out the purposes enumerated in G.S. 106-25 and 106-26. (1951, c. 1014, s. 3.)

§§ 106-26.2 to 106-26.6: Reserved for future codification purposes.

ARTICLE 1A.

State Farm Operations Commission.

§ 106-26.7. Creation of State Farm Operations Commission. — There is hereby created a policy-making body within the Department of Agriculture which shall be known as the State Farm Operations Commission. The State Farm Operations Commission shall consist of a member of the Board of Agriculture elected by a vote of the Board of Agriculture; the Dean, School of Agriculture and Life Sciences, North Carolina State University; the Dean, School of Forest Resources, North Carolina State University; the Secretary of Human Resources; the Secretary of Correction; the chairman of the Committee of Agriculture of the House of Representatives and the chairman of the Committee of Agriculture of the Senate; or their permanent designees. Each member of the State Farm Operations Commission shall be deemed serving on the Commission in an ex officio capacity to his office and shall continue to serve until his successor has been duly qualified. (1973, c. 1457, s. 1.)

§ 106-26.8. Powers and duties of State Farm Operations Commission. — The State Farm Operations Commission is authorized, empowered and directed to develop policies for the use of all agricultural and timber lands now under the control of the Department of Human Resources and the Department of Correction, and any other farm or timber lands, which are not being used in the performance of the statutory functions of any State department or agency. The Department of Human Resources and the Department of Correction are authorized, empowered and directed to determine the extent of such lands under the control of said Departments that are not being used for their statutory programs and said Department shall transfer the control and use of all lands not being used for such statutory programs to the Governor and Council of State on or before July 1, 1974. The Governor and the Council of State shall transfer such lands, buildings, equipment and animals as are to be used for agriculture in its broadest sense, including forestry, to the Department of Agriculture. The

transfer of the farms shall include all farm machinery, trucks and farm equipment used on such farms. Any State department may request of the Governor and Council of State to withdraw such land from the Department of Agriculture and to return such land for use by such Department in performance of the statutory programs of such Department in the manner provided by law.

The Department of Agriculture may rent or lease such farms, in the manner provided by law, and may from time to time make recommendations to the General Assembly as to the ultimate use of such farms for the best interest of the State.

The Department of Agriculture, or any other State department, may apply to the Governor and Council of State for approval of other State use of such land when such other use would better serve the interest of the general public.

The Department of Administration shall consider the long-range needs of the State and shall submit recommendations no later than the 1977 Session of the General Assembly as to whether the interest of the State would be served by continuing the operation of the farms, or some of them, or by renting, selling or otherwise utilizing the said farms or some of them.

The State Farm Operations Commission shall be responsible for promulgating rules and regulations for operating the lands and resources assigned to it in such a manner that the public interest is maximized. Farm production shall be directed to meet the institutional needs of the State. In the interest of efficiency of operation and in times of abundance beyond anticipation, it may be to the State's benefit to offer for sale farm products not required for institutional needs. (1973, c. 1457, s. 2.)

§ 106-26.9. Powers and duties of Commissioner of Agriculture. — The Commissioner of Agriculture is authorized and directed to implement, carry out and administer the policies and programs adopted by the State Farm Operations Commission. (1973, c. 1457, s. 3.)

§ 106-26.10. Budgetary organization. — All funds currently recommended or appropriated to the Department of Human Resources and Department of Correction for the maintenance and operation of farms and timber lands not being used for performance of statutory duties are hereby transferred to the Department of Agriculture to be used by the State Farms Operations Program. The Department of Agriculture shall provide all budgetary, staffing and support services. (1973, c. 1457, s. 4.)

§ 106-26.11. Use of products. — The Department of Human Resources and the Department of Correction shall have priority on food products and services from the State Farm Operations Program which are deemed essential to their institutional needs. The value of such food products and services provided by the State Farm Operations Program shall be based on mutually negotiated agreements between the State Farm Operations Commission and the respective agencies. To the extent food products are available from the State Farm Operations Program, the Department of Human Resources and Department of Correction shall use such products, unless provided by other state-owned farm operations. In event of dispute between departments, the Governor and Advisory Budget Commission shall determine the forms of such agreement and method of payment, either by cash or book transfer. (1973, c. 1457, s. 5.)

§ 106-26.12. Expenses of Commission members. — Expenses incurred by members of the State Farm Operations Commission in the performance of those duties herein inposed shall be reimbursed, subject to statutory limitations, from the State Farm Operations Program budget. (1973, c. 1457, s. 6.)

ARTICLE 2.

North Carolina Fertilizer Law of 1947.

§§ 106-27 to 106-50: Superseded by G.S. 106-50.1 to 106-50.22.

§ 106-50.1. Title. — This Article shall be known as the "North Carolina Fertilizer Law of 1947." (1947, c. 1086, s. 1.)

§ 106-50.2. Enforcing official. — This Article shall be administered by the Commissioner of Agriculture of the State of North Carolina, hereinafter referred to as the "Commissioner." (1947, c. 1086, s. 2.)

§ 106-50.3. Definitions. — When used in this Article:

(1) The term "brand name" means the name under which any individual mixed fertilizer or fertilizer material is offered for sale and may include a number, trademark, or other designation.

(2) The term "commercial fertilizer" includes both mixed fertilizer and/or fertilizer materials.

(3) The term "contractor" means any person, firm, corporation, wholesaler, retailer, distributor or any other person who for hire or reward applies commercial fertilizer to the soil of a consumer; provided that this shall not apply to any consumer applying commercial fertilizer to only the land that he owns or to which he otherwise holds rights, for the production of his own crops.

(4) The term "distributor" means any person who offers for sale, sells, barters, or otherwise supplies mixed fertilizers or fertilizer materials.

(5) The term "fertilizer material" means any substance containing nitrogen, phosphoric acid, potash, or any other recognized plant food element or compound which is used primarily for its plant food content or for compounding mixed fertilizers. Not included in this definition are all types of unmanipulated animal and vegetable manures and mulches for which no plant food content is claimed.

(6) The term "fortified mulch" means substances composed primarily of plant remains or mixtures of such substances to which plant food has been added and for which plant food is claimed.

In "fortified mulches" the minimum percentages of total nitrogen, available phosphoric acid, and soluble or available potash are to be guaranteed and the guarantee stated in multiples of quarter percentages (.25%); provided, however, that such percentages shall not exceed one percent (1%) respectively subject to the same limits and tolerances set forth in this Chapter.

(7) The term "grade" means the minimum percentage of total nitrogen, available phosphoric acid, and soluble or available potash stated in the order given in this subdivision and, when applied to mixed fertilizers, shall be in whole numbers only.

(8) The term "manipulated manures" means substances composed primarily of excreta, plant remains or mixtures of such substances which have been processed in any manner, including the addition of plant foods, drying, grinding and other means.

In "manipulated manures" the minimum percentages of total nitrogen, available phosphoric acid, and soluble or available potash are to be guaranteed, and the guarantee stated in multiples of half percentages (.50%).

(9) The term "manufacturer" means a person engaged in the business of preparing, mixing, or manufacturing commercial fertilizers; and the term "manufacture" means preparing, mixing, or manufacturing.

(10) The term "mixed fertilizers" means products resulting from the combination, mixture, or simultaneous application of two or more fertilizer materials for use in or claimed to have value in promoting plant growth by a manufacturer or contractor.
(11) The term "mulch" means substances composed primarily of plant remains or mixtures of such substances to which no plant food has been added and for which no plant food is claimed.
(12) The term "official sample" means any sample of commercial fertilizer taken by the Commissioner or his authorized agent according to the methods prescribed in subsection (b) of G.S. 106-50.7.
(13) The term "percent" or "percentage" means the percentage by weight.
(14) The term "person" includes individuals, partnerships, associations, firms and corporations.
(15) The term "sell" or "sale" includes exchange.
(16) The term "specialty fertilizer" means any fertilizer distributed primarily for use on noncommercial crops such as garden, lawns, shrubs, and flowers; and may include fertilizers used for research or experimental purposes.
(17) The term "ton" means a net ton of 2,000 pounds avoirdupois.
(18) The term "unmanipulated manures" means substances composed primarily of excreta, plant remains or mixtures of such substances which have not been processed in any manner.
(19) Words importing the singular number may extend and be applied to several persons or things, and words importing the plural number may include the singular. (1947, c. 1086, s. 3; 1951, c. 1026, ss. 1, 2; 1955, c. 354, s. 1; 1959, c. 706, ss. 1, 2; 1961, c. 66, ss. 1, 2.)

§ 106-50.4. Registration of brands and licensing of manufacturers and contractors. — (a) Each brand of commercial fertilizer, manipulated manure and fortified mulch shall be registered before being offered for sale, sold, or distributed in this State. The application for registration shall be submitted in duplicate to the Commissioner on forms furnished by the Commissioner, and shall be accompanied by a remittance of two dollars ($2.00) per brand and grade as a registration fee. Upon approval by the Commissioner a copy of the registration shall be furnished to the applicant. All registrations expire on July first of each year. The application shall include the following information:
(1) The name and address of the person guaranteeing registration.
(2) The brand.
(3) The grade.
(4) The guaranteed analysis showing the minimum percentage of plant food in the following order and form; provided that the Commissioner of Agriculture may vary this order and form for small packages of 25 pounds and less:
a. In mixed fertilizers (other than those branded for tobacco):
Total nitrogen . . . . . —— percent
(Optional) water-insoluble nitrogen . . . . . —— percent
percentage of total in multiples of five.
Available phosphoric acid . . . . . —— percent
Soluble or available potash . . . . . —— percent
(Optional) If acid-forming or non-acid-forming potential is guaranteed, the potential basicity or acidity expressed as equivalent of calcium carbonate in multiples of five percent (5%) (or 100 pounds per ton) only.
b. In mixed fertilizer (branded for tobacco):

Field Fertilizer

Total nitrogen . . . . . —— percent

(Optional) nitrogen in the form of nitrate ..... —— percent
percentage of total in multiples of five.
Water-insoluble nitrogen ..... —— percent
percentage of total in multiples of five.
Available phosphoric acid ..... —— percent
Soluble or available potash ..... —— percent
Maximum chlorine ..... —— percent

Plant Bed Fertilizer

Total nitrogen ..... —— percent
(Optional) nitrogen in the form of nitrate ..... —— percent
percentage of total in multiples of five.
(Optional) water-insoluble nitrogen ..... —— percent
percentage of total in multiples of five.
Available phosphoric acid ..... —— percent
Soluble or available potash ..... —— percent
Maximum chlorine ..... —— percent
(Optional) If acid-forming or non-acid-forming potential is guaranteed, the potential basicity or acidity expressed as equivalent of calcium carbonate in multiples of five percent (5%) (or 100 pounds per ton) only.

c. In fertilizer materials (if claimed):
Total nitrogen ..... —— percent
Available phosphoric acid ..... —— percent
In the case of bone, tankage, and other organic phosphate materials on which the chemist makes no determination of available phosphoric acid, the total phosphoric acid shall be guaranteed: Provided, that unacidulated mineral phosphatic materials and basic slag shall be guaranteed as to both total and available phosphoric acid and the degree of fineness.
Soluble or available potash ..... —— percent
Other recognized plant food ..... —— percent

d. In manipulated manures:
Total nitrogen ..... —— percent
Available phosphoric acid ..... —— percent
Soluble or available potash ..... —— percent
(The manures from which nitrogen, phosphoric acid, and potash are derived.)

e. In fortified mulches:
Total nitrogen ..... —— percent
Available phosphoric acid ..... —— percent
Soluble or available potash ..... —— percent
(Material or materials of which the mulch is composed.)

(5) The sources from which the nitrogen, phosphoric acid, and potash are derived.

(6) Magnesium (Mg) or magnesium oxide (MgO), calcium (Ca) or calcium oxide (CaO), and sulfur (S) may be claimed as secondary plant foods in all mixed fertilizers, but when one or more of these is so claimed the minimum percentage of total magnesium (Mg) or total magnesium oxide (MgO), total calcium (Ca) or total calcium oxide (CaO), and total sulfur (S), as applicable, shall be guaranteed.

(7) Borax may be claimed as an ingredient of mixed fertilizers. If claimed, it shall be guaranteed in terms of pounds of borax ($NA_2B_4O_7.10H_2O$) per 100 pounds of fertilizer and in increments of ¼, ½, and multiples of ½ pound per 100 pounds of fertilizer. The guarantee will be consid-

ered both a minimum and a maximum guarantee. The analysis guarantee shall be on a separate tag as prescribed by the Commissioner.

(8) Additional plant food elements, compounds, or classes of compounds, determinable by chemical control methods, may be guaranteed only by permission of the Commissioner by and with the advice of the director of the experiment station. When any such additional plant food elements, compounds, or classes of compounds are included in the guarantee, they shall be subject to inspection and analysis in accordance with the methods and regulations that may be prescribed by the Commissioner. The Commissioner shall also fix penalties for failure to fulfill such guarantees.

(9) In no case, except in the case of unacidulated mineral phosphates and/or basic slag unmixed with other materials shall both the terms total phosphoric acid and available phosphoric acid be used in the same statement of analysis.

(b) The distributor of any brand and grade of commercial fertilizer shall not be required to register the same if it has already been registered under this Article by a person entitled to do so and such registration is then outstanding.

(c) The grade of any brand of mixed fertilizer shall not be changed during the registration period, but the guaranteed analysis may be changed in other respects and the sources of materials may be changed: Provided, prompt notification of such change is given to the Commissioner and the change is noted on the container or tag: Provided, further, that the guaranteed analysis shall not be changed if it, in any way, lowers the quality of the fertilizer: Provided, further, that if at a subsequent registration period, the registrant desires to make any change in the registration of a given brand and grade of fertilizer, said registrant shall notify the Commissioner of such change 30 days in advance of such registration; that if the Commissioner, after consultation with the director of the agricultural experiment station decides that such change materially lowers the crop producing value of the fertilizer, he shall notify the registrant of his conclusions, and if the registrant registers the brand and grade with the proposed changes, then the Commissioner shall give due publicity to said changes through the Agriculture Review and/or by such other means as he may deem advisable.

(d) Any person, firm or corporation wishing to become a fertilizer manufacturer or contractor, as defined in this Article, shall before engaging in such business secure a license from the Commissioner of Agriculture. Such person, firm or corporation shall make application for such license on forms to be furnished by the Commissioner submitting such information as to his proposed operation as the Commissioner may prescribe. Such license shall be renewable annually on the first day of July. Such license may be revoked for a violation of any provisions of this Article, or of any rule or regulation adopted by the Board of Agriculture. (1947, c. 1086, s. 4; 1949, c. 637, s. 1; 1951, c. 1026, ss. 3-6; 1959, c. 706, ss. 3-5; 1961, c. 66, ss. 3, 4; 1973, c. 611, ss. 1-4.)

Editor's Note. — The 1973 amendment rewrote the last sentence in subdivision (4)a of subsection (a), deleted "Total magnesium oxide . . . — percent" under "Field Fertilizer" and "Plant Bed Fertilizer" and rewrote the former last two paragraphs of subdivision (4)b in subsection (a) and deleted, at the end of subdivision (6) of subsection (a), "excepting that the sulfur guarantee for fertilizers branded for tobacco shall be both the maximum and the minimum percentages."

§ 106-50.5. Labeling. — (a) Any commercial fertilizer offered for sale, sold, or distributed in this State in bags, barrels, or other containers shall have placed on or affixed to the container the net weight and the data in written or printed form, required by subsection (a), with the exception of subdivision (5), of G.S. 106-50.4 printed either (i) on tags to be affixed to the end of the package or (ii) directly on the package. In case the brand name appears on the package, the grade shall also appear on the package, immediately preceding the guaranteed analysis or as a part of the brand name. The size of the type of numerals indicating the grade on the container shall not be less than two inches in height for containers of 100 pounds or more; not less than one inch for containers of 50 to 99 pounds; and not less than one-half inch for packages of less than 50 pounds. In case of fertilizers sold in containers on which the brand or other designations of the distributor do not appear, the grade must appear in a manner prescribed by the Commissioner on tags attached to the container.

(b) If transported in bulk, the net weight and the data, in written or printed form, as required by subsection (a), with the exception of subdivision (5), of G.S. 106-50.4, shall accompany delivery and be supplied to the purchaser.

(c) If mixed fertilizer is sold or intended to be sold in bags weighing more than 100 pounds, each bag must have a tag attached thereto, of a type approved by the Commissioner, showing the grade of the fertilizer contained therein. Such tag must be attached between the ears of each bag, or in the case of a machine sewed bag, approximately at the center of the sewed end of the bag: Provided, that in lieu of such tag the grade of the fertilizer may be printed on the end of the bag in readily legible numerals. (1947, c. 1086, s. 5; 1949, c. 637, s. 2; 1955, c. 354, s. 2.)

Editor's Note. — The cases cited below were decided under prior law.

Warranty of Contents. — Manufacturers and vendors of commercial fertilizers impliedly warrant that they contain the ingredients specified on the tags placed on the bags, according to the requirements of the statute. Swift & Co. v. Aydlett, 192 N.C. 330, 135 S.E. 141 (1926).

Compliance with Statute Warranted. — When plaintiffs, as manufacturers, dealers or agents, sold to defendant commercial fertilizers, they must be held to have warranted that they had complied with the statute, and that the articles delivered, as commercial fertilizers were truthfully branded as required by the statute. Swift v. Etheridge, 190 N.C. 162, 129 S.E. 453 (1925).

Note for Purchase Price of Fertilizers Not Complying with Statute. — If the contents of the bags or packages delivered to defendant by plaintiffs were not, in fact commercial fertilizers, of the analysis guaranteed on each bag or package, as required, there was no consideration for the note given for the purchase price of the articles bought by defendant, and plaintiffs are not entitled to recover on said note. Swift v. Etheridge, 190 N.C. 162, 129 S.E. 453 (1925).

The rule of caveat emptor, as applied at common law in the sale of articles of personal property, is not applicable to the sale of commercial fertilizers in this State. Swift v. Etheridge, 190 N.C. 162, 129 S.E. 453 (1925); Swift & Co. v. Aydlett, 192 N.C. 330, 135 S.E. 141 (1926).

The burden of proof is upon the manufacturer to show, in an action against a purchaser for the purchase price, that the goods were at least merchantable, and that the ingredients used in their manufacture were in accordance with the specifications upon the tags placed on the bags under the requirements of the statute. Swift & Co. v. Aydlett, 192 N.C. 330, 135 S.E. 141 (1926).

A waiver by the purchaser of any demand for damages on account of any deficiencies in the ingredients of fertilizers, except such as may be ascertained in the manner specified in the statute, is valid and enforceable. Armour Fertilizer Works v. Aiken, 175 N.C. 399, 95 S.E. 657 (1918).

§ 106-50.6. Inspection fees. — (a) For the purpose of defraying expenses on the inspection and of otherwise determining the value of commercial fertilizers in this State, there shall be paid to the Department of Agriculture a charge of twenty-five cents (25¢) per ton on all commercial fertilizers in packages of more than five pounds of such commercial fertilizer. On individual packages of five pounds or less there shall be paid in lieu of the tonnage fee an annual registration

fee of twenty-five dollars ($25.00) for each brand offered for sale, sold, or distributed; provided that any per annum (fiscal) tonnage of any brand sold in excess of one hundred tons may be subject to the charge of twenty-five cents (25¢) per ton as provided herein. The Commissioner, with the advice and consent of the Board of Agriculture is hereby empowered to adopt such regulations as will insure the enforcement of this law. Whenever any manufacturer of commercial fertilizer shall have paid the charges required by this section his goods shall not be liable to further tax, whether by city, town, or county; provided, this shall not exempt the commercial fertilizers from an ad valorem tax.

(b) Reporting System. — Each manufacturer, importer, jobber, firm, corporation or person who distributes commercial fertilizers in this State shall make application to the Commissioner of Agriculture for a permit to report the tonnage of commercial fertilizer sold and shall pay to the North Carolina Department of Agriculture an inspection fee of twenty-five cents (25¢) per ton. The Commissioner of Agriculture is authorized to require each such distributor to keep such records as may be necessary to indicate accurately the tonnage of commercial fertilizers sold in the State, and as are satisfactory to the Commissioner of Agriculture. Such records shall be available to the Commissioner, or his duly authorized representative, at any and all reasonable hours for the purpose of making such examination as is necessary to verify the tonnage statement and the inspection fees paid. Each and every distributor shall report the tonnage sold monthly on forms furnished by the Commissioner. Such reports shall be made and inspection fee shall be due and payable monthly on the tenth day of each month covering the tonnage and kind of commercial fertilizers sold during the past month. If the report is not filed and the inspection fee paid by the tenth day following the date due or if the report of tonnage be false, the Commissioner may revoke the permit, and if the inspection fee be unpaid after the 15-day grace period, the amount shall bear a penalty of ten percent (10%) which shall be added to the inspection fee due and shall constitute a debt and become the basis of judgment against the securities or bond which may be required. In order to guarantee faithful performance with the provisions of this subsection each manufacturer, importer, jobber, firm, corporation or person shall, before being granted a permit to use the reporting system, deposit with the Commissioner cash in the amount of one thousand dollars ($1,000) or securities acceptable to the Commissioner of a value of at least one thousand dollars ($1,000) or shall post with the Commissioner a surety bond in like amount, executed by some corporate surety company authorized to do business in North Carolina. The Commissioner shall approve all such securities and bonds before acceptance. (1947, c. 1086, s. 6; 1949, c. 637, s. 3; 1959, c. 706, ss. 6, 7; 1973, c. 611, s. 5.)

Editor's Note. — The 1973 amendment deleted "under oath and" preceding "on forms" in the fourth sentence of subsection (b).

The cases cited below were decided under a prior law.

Action to Secure Tax Wrongfully Collected. — The Board of Agriculture is a department of the State government, and an action against it to recover money alleged to have been wrongfully collected by it as a license tax cannot be maintained, the State not having given its consent to be sued in that respect. Lord & Polk Chem. Co. v. Board of Agriculture, 111 N.C. 135, 15 S.E. 1032 (1892).

Property Tax. — The statute will not be so construed as to relieve manufacturers of fertilizers or fertilizing material, paying this inspection tax, from the payment of property tax required by the Constitution. Pocomoke Guano Co. v. Biddle, 158 N.C. 212, 73 S.E. 996 (1912).

§ 106-50.7. Sampling, inspection and testing. — (a) It shall be the duty of the Commissioner, who may act through his authorized agent, to sample, inspect, make analysis of, and test commercial fertilizers offered for sale, sold, or distributed within the State at such time and place and to such an extent as

he may deem necessary to determine whether such commercial fertilizers are in compliance with the provisions of this Article. The Commissioner, individually or through his agent, is authorized to enter upon any public or private premises during regular business hours in order to have access to commercial fertilizers subject to the provisions of this Article and the rules and regulations thereto.

(b) The methods of sampling shall be as follows:

(1) For the purposes of analysis by the Commissioner or his duly authorized chemists and for comparison with the guarantee supplied to the Commissioner in accordance with G.S. 106-50.4 and 105-50.5, the Commissioner, or any official inspector duly appointed by him, shall take an official sample of not less than one pound from containers of commercial fertilizer. No sample shall be taken from less than five containers. If the lot comprises five or more containers, portions shall be taken from each one up to a total of 10 containers. If the lot comprises from 10 to 100 containers, portions shall be taken from 10 containers. Of lots comprising more than 100 containers, portions shall be taken from 10 percent of the total number of containers.

(2) In sampling commercial fertilizers, in bulk, either in a factory or a car, at least 10 portions shall be drawn and these from different places so as fairly to represent the pile or car lot.

(3) In sampling, a core sampler shall be used that removes a core from a bag or other package from top to bottom, and the cores taken shall be mixed on clean oil cloth or paper, and if necessary shall be reduced after thoroughly mixing, by quartering, to the quantity of sample required. The composite sample taken from any lot of commercial fertilizer under the provision of this subdivision shall be placed in a tight container and shall be forwarded to the Commissioner with proper identification marks.

(4) The Commissioner may modify the provisions of this section to bring them into conformity with any changes that may hereafter be made in the official methods of and recommendations for sampling commercial fertilizers which shall have been adopted by the Association of Official Agricultural Chemists or by the Association of American Fertilizer Control Officials. Thereafter, such methods and recommendations shall be used in all sampling done in connection with the administration of this Article in lieu of those prescribed in subdivisions (1), (2), and (3) of this subsection.

(5) All samples taken under the provisions of this section shall be taken from original unbroken bags or containers, the contents of which have not been damaged by exposure, water or otherwise.

(6) The Commissioner shall refuse to analyze all samples except such as are taken under the provisions of this section and no sample unless so taken shall be admitted as evidence in the trial of any suit or action wherein there is called into question the value or composition of any lot of commercial fertilizer distributed under the provisions of this Article.

(7) In the trial of any suit or action wherein there is called in question the value or composition of any lot of commercial fertilizer, a certificate signed by the fertilizer chemist and attested with the seal of the Department of Agriculture, setting forth the analysis made by the chemist of the Department of Agriculture, of any sample of said commercial fertilizer, drawn under the provisions of this section and analyzed by them under the provisions of the same, shall be prima facie proof that the lot of fertilizer represented by the sample was of the value and constituency shown by said analysis. And the said certificate of the chemist shall be admissible in evidence to the same extent as if

it were his deposition taken in said action in the manner prescribed by law for the taking of depositions.

(c) The methods of analysis shall be those adopted as official by the Board of Agriculture and shall conform to sound laboratory practices as evidenced by methods prescribed by the Association of Official Agriculture Chemists of the United States. In the absence of methods prescribed by the Board, the Commissioner shall prescribe the methods of analysis.

(d) The result of official analysis of any commercial fertilizer which has been found to be subject to penalty shall be forwarded by the Commissioner to the registrant at least 10 days before the report is submitted to the purchaser. If during that period no adequate evidence to the contrary is made available to the Commissioner, the report shall become official. Upon request the Commissioner shall furnish to the registrant a portion of any sample found subject to penalty.

(e) Any purchaser or consumer may take and have a sample of mixed fertilizer or fertilizer material analyzed if taken in accordance with the following rules and regulations:

(1) At least five days before taking a sample, the purchaser or consumer shall notify the manufacturer or seller of the brand in writing, at his permanent address, of his intention to take such a sample and shall request the manufacturer or seller to designate a representative to be present when the sample is taken.

(2) The sample shall be drawn in the presence of the manufacturer, seller, or a representative designated by either party together with two disinterested freeholders; or in case the manufacturer, seller, or representative of either refuses or is unable to witness the drawing of such a sample, a sample may be drawn in the presence of three disinterested freeholders: Provided, any such sample shall be taken with the same type of sampler as used by the inspector of the Department of Agriculture in taking samples and shall be drawn, mixed, and divided as directed in subdivisions (1), (2), (3), (4), and (5) of subsection (b) of this section, except that the sample shall be divided into two parts each to consist of at least one pound. Each of these is to be placed into a separate, tight container, securely sealed, properly labeled, and one sent to the Commissioner for analysis and the other to the manufacturer. A certificate statement in a form which will be prescribed and supplied by the Commissioner must be signed by the parties taking and witnessing the taking of the sample. Such certificate is to be made and signed in duplicate and one copy sent to the Commissioner and the other to the manufacturer or seller of the brand sampled. The witnesses of the taking of any sample, as provided for in this section, shall be required to certify that such sample has been continuously under their observation from the taking of the sample up to and including the delivery of it to an express agency, a post office or to the office of the Commissioner.

(3) Samples drawn in conformity with the requirements of this section shall have the same legal status in the courts of the State, as those drawn by the Commissioner or any official inspector appointed by him as provided for in subsection (b) of this section.

(4) No suit for damages claimed to result from the use of any lot of mixed fertilizer or fertilizer material may be brought unless it shall be shown by an analysis of a sample taken and analyzed in accordance with the provisions of this Article, that the said lot of fertilizer as represented by a sample or samples taken in accordance with the provisions of this section does not conform to the provisions of this Article with respect to the composition of the mixed fertilizer or fertilizer material, unless it shall appear to the Commissioner that the manufacturer of the

fertilizer in question has, in the manufacture of other goods offered in this State during such season, employed such ingredients as are outlawed by the provisions of this Article, or unless it shall appear to the Commissioner that the manufacturer of such fertilizer has offered for sale during that season any kind of dishonest or fraudulent goods or unless it shall appear to the Commissioner that the manufacturer of the fertilizer in question, or a representative, agent or employee of the manufacturer, has violated any provisions of G.S. 106-50.12. (1947, c. 1086, s. 7; 1955, c. 354, s. 3; 1973, c. 1304, s. 1.)

Editor's Note. — The 1973 amendment added at the end of subdivision (4) of subsection (e) the provision as to violation of § 106-50.12. Section 2 of the act provides that it shall not affect pending litigation.

This section does not apply to actions for damages for breach of an express warranty of fitness of the fertilizer for the purposes for which it was warranted. Potter v. Tyndall, 22 N.C. App. 129, 205 S.E.2d 808 (1974).

When a litigant alleges that his losses are the result of false statements concerning fertilizer which constitute an express warranty of fitness, he is not required to comply with the provisions of this section. Potter v. Tyndall, 22 N.C. App. 129, 205 S.E.2d 808 (1974).

It is impossible for any farmer suffering damages from the breach of an express warranty of fitness to satisfy the requirements of this statute. Potter v. Tyndall, 22 N.C. App. 129, 205 S.E.2d 808 (1974).

But Does Apply to Action for Breach of Implied Warranty. — An action to recover damages for breach of implied warranty is in essence an action based on the inherent defects of the goods and is within the scope of this section. Potter v. Tyndall, 22 N.C. App. 129, 205 S.E.2d 808 (1974).

Section 25-2-315 does not repeal or limit the scope of subdivision (4) of subsection (e), since § 25-2-102 provides that the Uniform Commercial Code does not "impair or repeal any statute regulating sales to . . . farmers." Potter v. Tyndall, 22 N.C. App. 129, 205 S.E.2d 808 (1974).

§ 106-50.8. Plant food deficiency. — (a) The Commissioner in determining for administrative purposes whether any commercial fertilizer is deficient in plant food, shall be guided solely by the official sample as defined in subdivision (12) of G.S. 106-50.3, and as provided for in subsections (b), (c), and (d) of G.S. 106-50.7.

(b) If the analysis shall show that any commercial fertilizer falls short of the guaranteed analysis in any ingredient, a penalty shall be assessed in accordance with the following provisions:

(1) Total nitrogen: a penalty of three times the value of the deficiency, if such deficiency is in excess of 0.20 of one percent on goods that are guaranteed two percent (2%); 0.25 of one percent on goods that are guaranteed three percent (3%); 0.35 of one percent on goods that are guaranteed four percent (4%); 0.40 of one percent on goods that are guaranteed five percent (5%) up to and including eight percent (8%); 0.50 of one percent on goods guaranteed above eight percent (8%) up to and including thirty percent (30%); and 0.75 of one percent on goods guaranteed over thirty percent (30%).

(2) Available phosphoric acid: a penalty of three times the value of the deficiency, if such deficiency exceeds 0.40 of one percent on goods that are guaranteed up to and including ten percent (10%); 0.50 of one percent on goods that are guaranteed above ten percent (10%) up to and including twenty-five percent (25%); 0.75 of one percent on goods guaranteed over twenty-five percent (25%).

(3) Soluble or available potash: a penalty of three times the value of the deficiency, if such deficiency is in excess of 0.20 of one percent on goods that are guaranteed two percent (2%); 0.30 of one percent on goods that are guaranteed three percent (3%); 0.40 of one percent on goods guaranteed four percent (4%); 0.50 of one percent on goods guaranteed

above four percent (4%) guaranteed above eight percent (8%) up to and including twenty percent (20%); and one percent on goods guaranteed over twenty percent (20%).

(4) Should the basicity or acidity as equivalent of calcium carbonate of any sample of fertilizer be found upon analysis to differ more than five percent (or 100 pounds of calcium carbonate equivalent per ton) from the guarantee, then a penalty of fifty cents (50¢) per ton for each 50 pounds calcium carbonate equivalent, or fraction thereof in excess of the 100 pounds allowed, may be assessed and paid as under subsection (c) of this section.

(5) Chlorine: If the chlorine content of any lot of fertilizer branded for tobacco shall exceed the maximum amount guaranteed by more than 0.5 of one percent, a penalty shall be assessed equal to ten percent (10%) of the value of the fertilizer for each additional 0.5 of one percent of excess or fraction thereof.

(6) Water insoluble nitrogen: A penalty of three times the value of the deficiency shall be assessed, if such deficiency is in excess of 0.10 of one percent on goods guaranteed up to and including 0.50 percent; 0.20 of one percent on goods guaranteed from 0.5 percent to one percent (1%); 0.30 of one percent on goods guaranteed from one percent (1%) to two percent (2%); 0.50 of one percent on goods guaranteed above two percent (2%) and up to and including five percent (5%); and one percent (1%) on goods guaranteed over five percent (5%).

(7) Nitrate nitrogen: A penalty of three times the value of the deficiency shall be assessed if the deficiency shall exceed 0.10 of one percent for goods guaranteed up to and including 0.5 percent; 0.15 of one percent for goods guaranteed from 0.5 to one percent (1%); 0.25 of one percent for goods guaranteed from one (1%) to two percent (2%); and 0.35 of one percent for goods guaranteed above two percent (2%).

(8) Total magnesium or total magnesium oxide: If the magnesium content found falls as much as 0.30 of one percent below the minimum amount guaranteed, a penalty of fifty cents (50¢) per ton shall be assessed for each 0.15 of one percent additional deficiency or fraction thereof. If the magnesium oxide content found falls as much as 0.50 of one percent below the minimum amount guaranteed, a penalty of fifty cents (50¢) per ton shall be assessed for each 0.50 of one percent additional deficiency or fraction thereof.

(9) Total calcium or total calcium oxide: If the calcium content found falls as much as 0.70 of one percent below the minimum amount guaranteed, a penalty of fifty cents (50¢) per ton shall be assessed for each 0.35 of one percent additional deficiency or fraction thereof. If the calcium oxide content found falls as much as one percent below the minimum amount guaranteed, a penalty of fifty cents (50¢) per ton shall be assessed for each 0.50 of one percent additional deficiency or fraction thereof.

(10) Sulfur: If the sulfur content is found to be as much as 1.50 percent below the minimum amount guaranteed in the case of all mixed fertilizers, including mixed fertilizers branded for tobacco, a penalty of fifty cents (50¢) per ton for each 0.50 of one percent additional excess or fraction thereof, shall be assessed.

(11) Deficiencies or excesses in any other constituent or constituents covered under subdivisions (6) and (7), subsection (a), G.S. 106-50.4 which the registrant is required to or may guarantee shall be evaluated by the Commissioner and penalties therefor shall be prescribed by the Commissioner.

(c) All penalties assessed under this section shall be paid to the consumer of the lot of fertilizer represented by the sample analyzed within three months from the date of notice by the Commissioner to the distributor, receipts taken therefor, and promptly forwarded to the Commissioner: Provided, that in no case shall the total assessed penalties exceed the commercial value of the goods to which it applies. If said consumers cannot be found, the amount of the penalty assessed shall be paid to the Commissioner who shall deposit the same in the Department of Agriculture fund, of which the State Treasurer is custodian. Such sums as shall be found to be payable to consumers on lots of fertilizer against which said penalties were assessed shall not be subject to claim by the consumer after 12 months from the date of assessment. (1947, c. 1086, s. 8; 1955, c. 354, s. 4.)

Editor's Note. — Subsection (b)(3) of this section is printed just as it appears in the authenticated copy of the act. However, there seems to be something missing between "percent" and "guaranteed" in the phrase "four percent (4%) guaranteed" near the end of the paragraph.

§ 106-50.9. Determination and publication of commercial values. — For the purpose of determining the commercial values to be applied under the provisions of G.S. 106-50.8, the Commissioner shall determine and publish annually the values per pound of nitrogen, phosphoric acid, and potash in commercial fertilizers in this State. The values so determined and published shall be used in determining and assessing penalties. (1947, c. 1086, s. 9.)

§ 106-50.10. Minimum plant food content. — No superphosphate containing less than eighteen percent (18%) available phosphoric acid nor any mixed fertilizer in which the sum of the guarantees for the nitrogen, available phosphoric acid, and soluble or available potash totals less than twenty percent (20%) may be offered for sale, sold, or distributed in this State. (1947, c. 1086, s. 10; 1951, c. 1026, s. 7; 1973, c. 611, s. 6.)

Editor's Note. — The 1973 amendment deleted, at the end of the section, two exception clauses, one relating to one grade of tobacco plant bed fertilizer and the other to complete field fertilizer.

§ 106-50.11. Grade list. — The Board of Agriculture, after a public hearing open to all interested parties, and upon approval by the director of the agricultural experiment station, shall, prior to June thirtieth of each year or as early as practicable thereafter, promulgate a list of grades of mixed fertilizer adequate to meet the agricultural needs of the State. After this list of grades has been established, no other grades of mixed fertilizers shall be eligible for registration: Provided, that the requirements of this section shall not apply to mixed fertilizers in packages of 25 pounds and less. The Commissioner may revise this list of grades by conforming to the procedure prescribed in this section.

It is provided, however, that any distributor may be permitted to sell one but not exceeding one grade of specialty fertilizer not on the current approved list. The Commissioner may, in his discretion, require a sample label to be submitted before registering such fertilizer. (1947, c. 1086, s. 11; 1951, c. 1026, s. 8; 1959, c. 706, s. 8.)

§ 106-50.12. False or misleading statements. — It shall be unlawful to make any false or misleading statement or representation in regard to any commercial fertilizer offered for sale, sold, or distributed in this State, or to use any misleading or deceptive trademark or brand name in connection therewith. The

Commissioner is hereby authorized to refuse the registration of any commercial fertilizer with respect to which this section is violated. (1947, c. 1086, s. 12.)

This section clearly shows that the legislature was concerned about misrepresentations relating to fertilizer and desired to prohibit them. Potter v. Tyndall, 22 N.C. App. 129, 205 S.E.2d 808 (1974).

§ 106-50.13. Grade-tonnage reports. — Each person registering commercial fertilizers under this Article shall furnish the Commissioner with a confidential written statement of the tonnage of each grade of fertilizer sold by him in this State. Said statement shall include all sales for the periods of July first to and including December thirty-first and of January first to and including June thirtieth of each year. The Commissioner may, in his discretion, cancel the registration of any person failing to comply with this section if the above statement is not made within 30 days from date of the close of each period. The Commissioner, however, in his discretion, may grant a reasonable extension of time. No information furnished under this section shall be disclosed in such a way as to divulge the operations of any person. (1947, c. 1086, s. 13.)

§ 106-50.14. Publication of information concerning fertilizers. — The Commissioner shall publish at least annually, in such forms as he may deem proper, complete information concerning the sales of commercial fertilizers, together with such data on their production and use as he may consider advisable, and a report of the results of the analyses based on official samples of commercial fertilizers sold or offered for sale within the State as compared with the analyses guaranteed under G.S. 106-50.4 and 106-50.5: Provided, however, that the information concerning production and use of commercial fertilizers shall be shown separately for periods July first to December thirty-first and January first to June thirtieth of each year, and that no disclosure shall be made of the operations of any person. (1947, c. 1086, s. 14; 1959, c. 706, s. 9.)

§ 106-50.15. Rules, regulations and standards. — The Board of Agriculture is authorized, after public hearing, to prescribe such rules and regulations as may be found necessary for the enforcement of this Article; and, upon recommendation of the director of the agricultural experiment station, to prescribe maximum chlorine for tobacco fertilizer. The Board of Agriculture is also authorized to regulate the weight of bags and/or packages in which fertilizer may be sold or offered for sale. (1947, c. 1086, s. 15; 1949, c. 637, s. 4.)

§ 106-50.16. Short weight. — If any commercial fertilizer in the possession of the consumer is found by the Commissioner to be short in weight, the registrant of said commercial fertilizer shall within 30 days after official notice from the Commissioner pay to the consumer a penalty equal to four times the value of the actual shortage. The Commissioner may in his discretion allow reasonable tolerance for short weight due to loss through handling and transporting. (1947, c. 1086, s. 16.)

§ 106-50.17. Cancellation of registration. — The Commissioner, upon approval of the Board of Agriculture, is authorized and empowered to cancel the registration of any brand of commercial fertilizer or to refuse to register any brand of commercial fertilizer as herein provided, upon satisfactory proof that the registrant has been guilty of fraudulent and deceptive practices in the evasions or attempted evasions of the provisions of this Article or any rules and regulations promulgated thereunder: Provided, that no registration shall be

revoked or refused until the registrant shall have been given a hearing by the Commissioner. (1947, c. 1086, s. 17.)

§ 106-50.18. "Stop-sale," etc., orders. — It shall be the duty of the Commissioner to issue and enforce a written or printed "stop-sale, use, or removal" order to the owner or custodian of any lot of commercial fertilizer and to hold at a designated place when the Commissioner finds said commercial fertilizer is being offered or exposed for sale in violation of any of the provisions of this Article until the law has been complied with and said commercial fertilizer is released in writing by the Commissioner or said violation has been otherwise legally disposed of by written authority. The Commissioner shall release the commercial fertilizer so withdrawn when the requirements of the provisions of this Article have been complied with and upon payment of all costs and expenses incurred in connection with the withdrawal. (1947, c. 1086, s. 18; 1955, c. 354, s. 5.)

§ 106-50.19. Seizure, condemnation and sale. — Any lot of commercial fertilizer not in compliance with the provisions of this Article shall be subject to seizure on complaint of the Commissioner to a court of competent jurisdiction in the area in which said commercial fertilizer is located. In the event the court finds the said commercial fertilizer to be in violation of this Article and orders the condemnation of said commercial fertilizer, it shall be disposed of in any manner consistent with the quality of the commercial fertilizer and the laws of the State: Provided, that in no instance shall the disposition of said commercial fertilizer be ordered by the court without first giving the claimant an opportunity to apply to the court for the release of said commercial fertilizer or for permission to process or relabel said commercial fertilizer to bring it into compliance with this Article. (1947, c. 1086, s. 19.)

§ 106-50.20. Punishment for violations. — Each of the following offenses shall be a misdemeanor and any person upon conviction thereof shall be punished as provided by law for the punishment of misdemeanors:

(1) To manufacture, offer for sale, or sell in this State any mixed fertilizer or fertilizer materials containing any substance used as a filler that is injurious to crop growth or deleterious to the soil, or to use in such mixed fertilizer or fertilizer materials as a filler any substance that contains inert plant food material or any other substance for the purpose or with the effect of defrauding the purchaser.

(2) To offer for sale or to sell in this State for fertilizer purposes any raw or untreated leather, hair, wool waste, hoof, horn, rubber or similar nitrogenous materials, the plant food content of which is largely unavailable, either as such or mixed with other fertilizer materials.

(3) To make any false or misleading representation in regard to any mixed fertilizer or fertilizer material shipped, sold or offered for sale by him in this State, or to use any misleading or deceptive trademark or brand in connection therewith. The sale or offer for sale of any mixture of nitrogenous fertilizer materials under a name or other designation descriptive of only one of the components of the mixture shall be considered deceptive and fraudulent.

The Commissioner is hereby authorized to refuse registration for any commercial fertilizer with respect to which this section is violated.

(4) The filing with the Commissioner of any false statement of fact in connection with the registration under G.S. 106-50.4 of any commercial fertilizer.

(5) Forcibly obstructing the Commissioner or any official inspector authorized by the Commissioner in the lawful performance by him of his duties in the administration of this Article.

(6) Knowingly taking a false sample of commercial fertilizer for use under provisions of this Article; or knowingly submitting to the Commissioner for analysis a false sample thereof; or making to any person any false representation with regard to any commercial fertilizer sold or offered for sale in this State for the purpose of deceiving or defrauding such other person.

(7) The fraudulent tampering with any lot of commercial fertilizer so that as a result thereof any sample of such commercial fertilizer taken and submitted for analysis under this Article may not correctly represent the lot; or tampering with any sample taken or submitted for analysis under this Article, if done prior to such analysis and disposition of the sample under the direction of the Commissioner.

(8) The delivery to any person by the fertilizer chemist or his assistants or other employees of the Commissioner of a report that is willfully false and misleading on any analysis of commercial fertilizer made by the Department in connection with the administration of this Article.

(9) Selling or offering for sale in this State commercial fertilizer without marking the same as required by G.S. 106-50.5.

(10) Selling or offering for sale in this State commercial fertilizer containing less than the minimum content required by G.S. 106-50.10.

(11) Failure of any manufacturer, importer, jobber, agent, or dealer to have applied for and to have been issued a permit as required by G.S. 106-50.6 before selling, offering or exposing for sale or distributing commercial fertilizers in this State.

(12) Failure of any manufacturer or contractor to procure a license under the provisions of G.S. 106-50.4(d) before beginning operations within the State. (1947, c. 1086, s. 20; 1959, c. 706, ss. 10, 11.)

This section clearly shows that the legislature was concerned about misrepresentations relating to fertilizer and desired to prohibit them. Potter v. Tyndall, 22 N.C. App. 129, 205 S.E.2d 808 (1974).

For sufficiency of indictment for violation of former statute, see State v. Southern Cotton Oil Co., 154 N.C. 635, 70 S.E. 741 (1911).

§ 106-50.21. Sales or exchanges between manufacturers. — Nothing in this Article shall be construed to restrict or avoid sales or exchanges of commercial fertilizers to each other by importers or manufacturers who mix fertilizer materials for sale or as preventing the free and unrestricted shipments of commercial fertilizers to manufacturers who have registered their brands as required by the provisions of this Article. (1947, c. 1086, s. 21.)

§ 106-50.22. Appeals from assessments and orders of Commissioner. — Nothing contained in this Article shall prevent any person from appealing to a court of competent jurisdiction from any assessment or penalty or other final order or ruling of the Commissioner or Board of Agriculture. (1947, c. 1086, s. 22.)

ARTICLE 3.

Fertilizer Laboratories.

§ 106-51. Certification of fertilizer laboratories. — The Commissioner of Agriculture, or his authorized agent, shall, upon the application of any commercial laboratory that analyzes fertilizer or fertilizer materials, make such examination as he shall consider fit of the work of said laboratory, and when, in his opinion, the examination shall show the work of the said laboratory to be accurate and reliable, he shall certify said laboratory to that effect.

To those manufacturers requesting names of certified laboratories, the Commissioner of Agriculture shall supply such information. (1933, c. 551.)

ARTICLE 4.

Insecticides and Fungicides.

§§ 106-52 to 106-65: Repealed by Session Laws 1971, c. 832, s. 4.

Cross Reference. — For present provisions as to pesticide control, see §§ 143-434 to 143-470.

ARTICLE 4A.

Insecticide, Fungicide and Rodenticide Act of 1947.

§§ 106-65.1 to 106-65.12: Repealed by Session Laws 1971, c. 832, s. 4.

Cross Reference. — For present provisions as to pesticide control, see §§ 143-434 to 143-470.

ARTICLE 4B.

Aircraft Application of Pesticides.

§§ 106-65.13 to 106-65.21: Repealed by Session Laws 1971, c. 832, s. 4.

Cross Reference. — For present provisions as to presticide control, see §§ 143-434 to 143-470.

ARTICLE 4C.

Structural Pest Control Act.

§ 106-65.22. Title. — This Article shall be known by the title of "Structural Pest Control Act of North Carolina of 1955." (1955, c. 1017.)

§ 106-65.23. Structural Pest Control Division of Department of Agriculture created; Director; Structural Pest Control Committee created; appointment; terms; quorum. — There is hereby created, within the North Carolina Department of Agriculture, a new division thereof, to be known as the Structural Pest Control Division of said Department.

The Commission of Agriculture is hereby authorized to appoint a Director of said Division whose duties and authority shall be determined by the Commissioner, subject to approval of the Board of Agriculture and subject to the provisions of this Article. Said Director shall act as secretary to the Structural Pest Control Committee herein created.

There is hereby created a Structural Pest Control Committee to be composed of five members. The Commissioner of Agriculture shall designate one member of the Board of Agriculture who shall serve as an ex officio member of said Committee for such time as he is a member of the Board of Agriculture. The Commissioner of Agriculture shall designate an employee of the Department of Agriculture to serve on said Committee at the pleasure of the Commissioner. The dean of the School of Agriculture of North Carolina State University at Raleigh shall appoint one member of the Committee who shall serve for one term of two years and who shall be a member of the entomology faculty of said University. The vacancy occurring on the Committee by the expired term of the member from the entomology faculty of said University shall be filled by the

dean of the School of Agriculture of North Carolina State University at Raleigh who shall designate any person of his choice from the entomology faculty of said University to serve on said Committee at the pleasure of the dean. The Governor shall appoint two members of said Committee who are actively engaged in the pest control industry, who are licensed in at least two phases of structural pest control as provided under G.S. 106-65.25(a), and who are residents of the State of North Carolina but not affiliates of the same company. The initial Committee members from the pest control industry shall be appointed as follows: one for a two-year term and one for a three-year term. After the initial appointments by the Governor, all ensuing appointments by the Governor shall be for terms of four years. Any vacancy occurring on the Committee by reason of death, resignation, or otherwise shall be filled by the Governor or the Commissioner of Agriculture, as the case may be, for the unexpired term of the member whose seat is vacant. A member of the Committee appointed by the Governor shall not succeed himself.

It shall be the duty of the Structural Pest Control Committee, in addition to conducting hearings relating to the suspension and revocation of licenses issued under this Article, and in addition to making rules and regulations pursuant to G.S. 106-65.29, to report annually to the Board of Agriculture the results of all hearings conducted by the Committee and to report the financial status of this Division of the Department of Agriculture.

The Director shall be responsible for and answerable to the Commissioner of Agriculture as to the operation and conduct of the Structural Pest Control Division.

Each member of the Committee who is not an employee of the State shall receive twenty dollars ($20.00) per diem while actually engaged in the business of the Committee. All members of the Committee and the attorney assigned to said Committee by the Attorney General shall be entitled to receive eight cents (8¢) per mile for travel and such other expenses as are incurred in the performance of their duties.

Three members of the Committee shall constitute a quorum but no action at any meeting of the Committee shall be taken without three votes in accord. The chairman shall be entitled to vote at all times.

The Committee shall meet at such times and such places in North Carolina as the chairman shall direct; provided, however, that three members of the Committee may call a special meeting of the Committee on five days' notice to the other members thereof.

All members of the Committee shall be appointed or designated, as the case may be, prior to and shall commence their respective terms on July 1, 1967.

At the first meeting of the Committee they shall elect a chairman who shall serve as such at the pleasure of the Committee. (1955, c. 1017; 1957, c. 1243, s. 1; 1967, c. 1184, s. 1; 1969, c. 541, s. 7; 1973, c. 556, s. 1.)

Cross Reference. — For designation of North Carolina State College of Agriculture and Engineering as North Carolina State University at Raleigh, see § 116-2.

Editor's Note. — The 1973 amendment inserted "from the entomology faculty of said University" in the fifth sentence and "who are licensed in at least two phases of structural pest control as provided under G.S. 106-65.25(a)" in the sixth sentence of the third paragraph.

State Government Reorganization. — The Structural Pest Control Division was transferred to the Department of Agriculture by § 143A-60, enacted by Session Laws 1971, c. 864.

§ 106-65.24. Definitions. — For the purposes of this Article, the following terms, when used in the Article or the rules and regulations, or orders made pursuant thereto, shall be construed respectively to mean:

(1) "Animal" means all vertebrate and invertebrate species, including but not limited to man and other mammals, birds, fish, and shellfish.

(2) "Applicant" means any person in charge of any individual, firm, partnership, corporation, association, or any other organization or any combination thereof, making application for a license to engage in structural pest control, control of structural pests or household pests, or fumigation operations, or any person qualified under the terms of this Article.

(3) "Attractants" means substances, under whatever name known, which may be toxic to insects and other pests but are used primarily to induce insects and other pests to eat poisoned baits or to enter traps.

(3a) "Branch office" means and includes any place of doing business which has two or more employees engaged in the control of insect pests, rodents, or wood-destroying organisms.

(4) "Certified applicator" means any individual who is certified under G.S. 106-65.25 as authorized to use or supervise the use of any pesticide which is classified for restricted use.

(5) "Commissioner" means the Commissioner of Agriculture of the State of North Carolina.

(6) "Committee" means the Structural Pest Control Committee.

(7) "Device" means any instrument or contrivance (other than a firearm) which is intended for trapping, destroying, repelling, or mitigating any pest or any other form of plant or animal life (other than man and other than bacteria, virus, or other microorganism on or in living man or other living animals); but not including equipment used for the application of pesticides when sold separately therefrom.

(8) "Director" means the Director of the Structural Pest Control Division of the Department of Agriculture.

(9) "Employee" means any person employed by a licensee with the exceptions of clerical, janitorial, or office maintenance employees, or those employees performing work completely disassociated with the control of insect pests, rodents or the control of wood-destroying organisms.

(10) "Fumigants" means any substance which by itself or in combination with any other substance emits or liberates a gas or gases, fumes or vapors and which gas or gases, fumes or vapors when liberated and when used will destroy vermin, rodents, insects, and other pests; but may be lethal, poisonous, noxious, or dangerous to human life.

(11) "Fungi" means wood-decaying fungi.

(12) "Insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class Insecta, comprising six-legged, usually winged forms, as for example, beetles, bugs, bees, flies, and to other allied classes of arthropods whose members are wingless and usually have more than six legs, as for example, spiders, mites, ticks, centipedes, and sowbugs.

(13) "Insecticides" means substances, not fumigants, under whatever name known, used for the destruction or control of insects and similar pests.

(14) "Label" means the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers.

(15) "Licensee" means the designated person in charge of the business establishment or business entity, whether it be individual, firm, partnership, corporation, association or any organization, or any combination thereof, engaged in pest control work covered under the provisions of this Article. Each branch office of a business establishment is to be in charge of a person who has a license herein provided for.

(16) "Person" means any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.
(17) "Pest" means any living organism, including but not limited to, insects, rodents, birds, and fungi, which the Commissioner declares to be a pest.
(18) "Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.
(19) "Registered pesticide" means a pesticide which has been registered by federal and/or State agency responsible for registering pesticides.
(20) "Repellents" means substances, not fumigants, under whatever name known, which may be toxic to insects and related pests, but are generally employed because of capacity for preventing the entrance or attack of pests.
(21) "Restricted-use pesticide" means a pesticide which has been designated as such by the federal and/or State agency responsible for registering pesticides.
(22) "Rodenticides" means substances, not fumigants, under whatever name known, whether poisonous or otherwise, used for the destruction or control of rodents.
(23) "Structural pest control" means the control of wood-destroying organisms or household pests (including, but not limited to, animals such as moths, cockroaches, ants, beetles, flies, mosquitoes, ticks, wasps, bees, fleas, mites, silverfish, millipedes, centipedes, sowbugs, crickets, termites, wood borers, etc.), including the identification of infestations or infections, the making of inspections, the use of pesticides, including insecticides, repellents, attractants, rodenticides, fungicides, and fumigants, as well as all other substances, mechanical devices or structural modifications under whatever name known, for the purpose of preventing, controlling and eradicating insects, vermin, rodents and other pests in household structures, commercial buildings, and other structures (including household structures, commercial buildings and other structures in all stages of construction), and outside areas, as well as all phases of fumigation, including treatment of products by vacuum fumigation, and the fumigation of railroad cars, trucks, ships, and airplanes, or any one or any combination thereof.
(24) "Under the direct supervision of a certified applicator" means, unless otherwise prescribed by its labeling, a pesticide shall be considered to be applied under the direct supervision of a certified applicator if it is applied by a competent person acting under the instructions and control of a certified applicator who is available if and when needed, even though such certified applicator is not physically present at the time and place the pesticide is applied. (1955, c. 1017; 1957, c. 1243, s. 2; 1967, c. 1184, ss. 2, 3; 1973, c. 556, s. 2.)

Editor's Note. — The 1973 amendment rewrote this section.

§ 106-65.25. Phases of structural pest control; license required; exceptions. — (a) Structural pest control is divided into the following phases:
(1) Control of wood-destroying organisms by any method other than fumigation,
(2) Control of household pests by any method other than fumigation,
(3) Fumigation,

and a license is required for each such phase, and it shall be unlawful for any person, firm, corporation, association or any organization or combination thereof to engage in or supervise work as a manager, owner, or owner-operator in any phase of structural pest control unless there shall first be secured a valid license

therefor, issued by the Structural Pest Control Committee, and signed by the Commissioner of Agriculture.

(b) This Article shall not apply to any person doing work on his own property or to any regular employee of any person, firm or corporation doing work on the property of such person, firm or corporation, under the direct supervision of the person who owns or is in charge of the property on which work is being done. This Article shall not apply to agents or agencies of the federal, State or local governments.

(c) Any person issued an original license after October 21, 1976, for any one or any combination of the three phases shall be deemed to be a "certified applicator" to use or supervise the use of pesticides which are classified for restricted use so long as the pesticides are being used only in the phase of structural pest control for which the person is licensed. (1955, c. 1017; 1957, c. 1243, s. 3; 1967, c. 1184, s. 4; 1973, c. 556, s. 3.)

Editor's Note.—The 1973 amendment added subsection (c).

§ 106-65.26. Qualifications of applicants for license. — Any applicant for a license must present satisfactory evidence to the Committee concerning his qualifications for such license. The basic qualifications shall be:

(1) Two years as an employee or owner-operator in the field of structural pest control, control of wood-destroying organisms or fumigation, for which license is applied, or

(2) One or more years' training in specialized pest control, control of wood-destroying organisms or fumigation under university or college supervision may be substituted for practical experience. Each year of such training may be substituted for one year of practical experience; provided, however, if applicant has had less than 12 months' practical experience, the Committee is authorized to determine whether said applicant has had sufficient experience to take the examination.

(3) A degree from a recognized college or university with training in entomology, sanitary or public health engineering, or related subjects; provided, however, if applicant has had less than 12 months' practical experience, the Committee is authorized to determine whether said applicant has had sufficient experience to take the examination.

(4) All applicants must have practical experience and knowledge of practical and scientific facts underlying the practice of structural pest control, control of wood-destroying organisms or fumigation.

No person who has within five years of his application been convicted of or has entered a plea of guilty or a plea of nolo contendere to a crime charged involving moral turpitude or who has forfeited bond to a charge involving moral turpitude, shall be entitled to take an examination or the issuance of a license under the provisions of this Article. (1955, c. 1017; 1967, c. 1184, s. 5; 1973, c. 556, s. 4.)

Editor's Note. — The 1973 amendment rewrote subdivisions (2) and (3).

§ 106-65.27. Examination of applicants; fee; license not transferable. — (a) Each applicant for an original license must demonstrate upon written, or written and oral, examination to be prescribed by the Committee, his knowledge of pesticides, their usefulness and their hazards; his competency as a structural pest control operator for the phases in which he is applying for a license and his knowledge of the laws and regulations governing the use and application

of pesticides. Frequency of such examination shall be in the discretion of the Committee, consideration being given to the number of applications received, provided that a minimum of two examinations shall be given annually. The examination will cover phases of structural pest control (control of wood-destroying organisms, household pests and fumigation).

An applicant shall submit with his application for examination an examination fee of twenty-five dollars ($25.00) for each of the phases of structural pest control in which he chooses to be examined. An examination for one or more phases of structural pest control may be taken at the same time. If an applicant fails to pass an examination for one or more phases of structural pest control, he shall be entitled to take one additional examination, at a regularly scheduled examination, without the payment of another examination fee.

(b) A license shall not be transferable. When there is a transfer of ownership, management or operation of a business of a licensee hereunder, the new owner, manager or operator (as the case may be) whether it be an individual, firm, partnership, corporation, or other entity, shall have 90 days from such sale or transfer, or until the next meeting of the Committee following the expiration of said 90-day period, to have a qualified licensee to operate said business.

(c) The committee shall by regulation provide for:

(1) All licensees licensed prior to October 21, 1976, to become qualified as certified applicators, and

(2) Requalifying licensees as certified applicators thereafter as required by the federal government at intervals no more frequent than that specified by federal law and federal regulation. (1955, c. 1017; 1967, c. 1184, s. 6; 1973, c. 556, ss. 5, 6.)

Editor's Note. — The 1973 amendment rewrote the first sentence of the first paragraph of subsection (a) and added subsection (c).

§ 106-65.28. Revocation or suspension of license. — (a) Any license may be revoked or suspended by a majority vote of the Committee, after notice and hearing, as provided in G.S. 106-65.32, for any one or more of the following causes:

(1) Misrepresentation for the purpose of defrauding; deceit or fraud; the making of a false statement with knowledge of its falsity for the purpose of inducing others to act thereon to their damage; or the use of methods or materials which are not reasonably suitable for the purpose contracted.

(2) Failure of the licensee to give the Committee, the Director, or their authorized representatives, upon request, true information regarding methods and materials used, or work performed.

(3) Failure of the license holder to make registrations herein required or failure to pay the registration fees.

(4) Any misrepresentation in the application for a license.

(5) Wilful violation of any rule or regulation adopted pursuant to this Article.

(6) Aiding or abetting a licensed or an unlicensed person to evade the provisions of this Article, combining or conspiring with such a licensed or unlicensed person to evade the provisions of this Article, or allowing one's license to be used by an unlicensed person;

(7) Impersonating any State, county or city inspector or official;

(8) Storing or disposing of containers or pesticides by means other than those prescribed on the label or adopted regulations;

(9) Using any registered pesticide in a manner inconsistent with its labeling.

(b) Suspension of any license under the provisions of this Article shall not be for less than 10 days nor more than two years, in the discretion of the Committee.

If a license is suspended or revoked under the provisions hereof, the licensee shall within five days of such suspension or revocation, surrender all licenses and identification cards issued thereunder to the Director or his authorized representative.

Any licensee whose license is revoked under the provisions of this Article shall not be eligible to apply for a new license hereunder until two years have elapsed from the date of the order revoking said license, or if an appeal is taken from said order of revocation, two years from the date of the order or final judgment sustaining said revocation.

The lapsing of a State structural pest control license by operation of law or the voluntary surrender of a license by a licensee shall not deprive the Committee of jurisdiction to proceed with any investigation or disciplinary proceedings against such licensee, or to render a decision suspending or revoking such license. (1955, c. 1017; 1967, c. 1184, s. 7; 1973, c. 556, ss. 7, 8.)

Editor's Note.—The 1973 amendment added subdivisions (6) through (9) of subsection (a) and added the last paragraph of subsection (b).

§ 106-65.29. Rules and regulations. — The Committee is hereby authorized and empowered to make such reasonable rules and regulations with regard to structural pest control as may be necessary to protect the interests, health and safety of the public. Such rules and regulations shall not become effective until a public hearing shall have been held and notification of such hearing shall have been given to all licensees. (1955, c. 1017; 1967, c. 1184, s. 8.)

§ 106-65.30. Inspectors; inspections and reports of violations; designation of resident agent. — For the enforcement of the provisions of this Article, the Director is authorized, subject to the approval of the Commissioner and Board of Agriculture, to appoint one or more qualified inspectors and such other employees as are necessary in order to carry out and enforce the provisions of this Article. The inspectors shall be known as "structural pest control inspectors." The Director, subject to the approval of the Commissioner of Agriculture and the Board of Agriculture, shall enforce the provisions of this Article by making or causing to be made periodical and unannounced inspections of work done by licensees under this Article engaged in any one or more phases of structural pest control as defined in G.S. 106-65.25. The Director shall cause the prompt and diligent investigation of all reports of violations of the provisions of this Article and the rules and regulations adopted pursuant to the provisions hereof; provided, however, no inspection shall be made by the Director, or inspectors, of any property without first securing the permission of the owner or occupant thereof.

Prior to the issuance or renewal of a license, every nonresident owner of a business performing any phase of structural pest control work shall designate in writing to the Director, a resident agent upon whom service or notice of process may be had to enforce the provisions of this Article or any civil or criminal liabilities arising hereunder. (1955, c. 1017; 1967, c. 1184, s. 9; 1973, c. 556, s. 9.)

Editor's Note. — The 1973 amendment added "Prior to the issuance or renewal of a license" at the beginning of the second paragraph.

§ 106-65.31. Annual license fee; registration of servicemen, salesmen and estimators; identification cards. — The fee for the issuance of a license for any one phase of structural pest control, as the same is defined in G.S. 106-65.25, shall be one hundred dollars ($100.00); provided, that when or any time after the fee for a license for any one phase is paid, the holder of said license may secure a license for either or both of the other two phases for an additional fee of fifty dollars ($50.00) per license phase. Licenses shall expire on June 30 of each year and shall be renewed annually. All licensees who fail or neglect to renew any license issued under the provisions of this Article on or before August 1 of each year, shall pay, in addition to the annual license fee, the sum of ten dollars ($10.00) for each phase before his license is renewed.

Any licensee whose license is lost or destroyed may secure a duplicate license for a fee of five dollars ($5.00).

A license holder shall register with the Director within 75 days of employment, the names of all solicitors and servicemen (not common laborers) and shall pay a registration fee of twenty dollars ($20.00) for each name registered, which fee shall accompany the registration. All registrations expire when a license expires. Each employee of a licensee for whom registration is made and registration fee paid shall be issued an identification card which shall be carried on the person of the employee at all times when performing any phase of structural pest control work. An identification card shall be renewed annually by payment of a renewal fee of twenty dollars ($20.00). An identification card shall be displayed upon demand to the Director or his authorized representative, or to the person for whom any phase of structural pest control work is being performed. When an identification card is lost or destroyed, the licensee shall secure a duplicate identification card for which he shall pay a fee of one dollar ($1.00). The licensee shall be responsible for registering and securing identification cards for all employees who are salesmen, servicemen and estimators.

It shall be unlawful for a serviceman, salesman or estimator to engage in the performance of any work covered by this Article without having first secured and in his possession an identification card. It shall be unlawful for a licensee to direct, or procure any salesman, serviceman or estimator to engage in the performance of any work covered by this Article without having first applied for an identification card for such employee or agent; provided, however, that the licensee shall have 75 days after employing a serviceman, salesman or estimator within which to apply for an identification card.

All registrations and applications for licenses and identification cards shall be filed with the Director.

No person shall act as a serviceman, salesman, estimator, district attorney, or agent for any licensee under this Article, nor shall any such person be issued an identification card by the Structural Pest Control Committee, who has within three years of the date of application for an identification card, been convicted of, pled guilty or nolo contendere, or forfeited bond, in any court, state or federal, to a crime involving moral turpitude or to any violation of the North Carolina Structural Pest Control Act or to any regulation promulgated by the Structural Pest Control Committee. This provision shall not apply to any person whose citizenship has been restored as provided by law. (1955, c. 1017; 1957, c. 1243, s. 4; 1967, c. 1184, s. 10; 1973, c. 47, s. 2; c. 556, s. 10.)

Editor's Note. — The first 1973 amendment substituted "district attorney" for "solicitor" in the first sentence of the last paragraph.

The second 1973 amendment substituted "75 days" for "30 days" in the first sentence of the third paragraph and in the second sentence of the fourth paragraph and added the last paragraph.

§ 106-65.32. Proceedings and hearings under Article; record of hearings and judgments; certified copy of revocation of license sent to clerk of superior court. — Proceedings under this Article shall be taken by the Structural Pest Control Committee for matters within its knowledge or upon accusations based on information of another. Said accusation must be in writing and under oath, verified by the person making the same. If by a member of the Committee, he shall be disqualified from sitting in judgment at the hearing on said accusation. Upon receiving such accusation, the Committee shall serve notice upon the accused at least 20 days before the date of the hearing notice by registered mail, or personally, of the time, place of hearing, and a copy of the charges. The Committee for sufficient cause, in its discretion, may postpone or continue said hearing from time to time, or if after proper notice no appearance is made by the accused, it may enter judgment at the time of hearing as prescribed herein, either by suspending or revoking the license of the accused. Both the Committee and the accused may have the benefit of counsel and the right to cross-examine witnesses, to take depositions and to compel attendance of witnesses as in civil cases by subpoena issued by the secretary of the Committee under the seal of the Committee and in the name of the State of North Carolina. The testimony of all witnesses at any hearing before the Committee shall be under oath or affirmation.

The record of all hearings and judgments shall be kept by the secretary of the Committee and in the event of suspension or revocation of license, the Committee shall, within 10 days, transmit a certified copy of said judgment to the clerk of the superior court of the county of the residence of the accused or his resident agent, and the clerk shall file said judgment in the judgment docket of said county.

Any licensee may appeal to the Superior Court of Wake County the revocation or suspension of a license issued under the provisions of this Article and such appeal shall be made pursuant to the provisions of Article 33 of Chapter 143 of the General Statutes. (1955, c. 1017; 1957, c. 1243, s. 5; 1967, c. 1184, s. 11; 1973, c. 556, s. 11.)

Editor's Note. — The 1973 amendment rewrote the fourth sentence of the first paragraph.

§ 106-65.33. Violation of Article or rules and regulations of Committee a misdemeanor. — Any person violating any provision of this Article or any rule or regulation of the Committee made pursuant to this Article shall be guilty of a misdemeanor and shall be fined or imprisoned, or both fined and imprisoned, in the discretion of the court. (1955, c. 1017; 1957, c. 1243, s. 6; 1967, c. 1184, s. 12.)

§ 106-65.34: Repealed by Session Laws 1967, c. 1184, s. 13.

§ 106-65.35: Repealed by Session Laws 1973, c. 556, s. 12.

§ 106-65.36. Reciprocity; intergovernmental cooperation. — The Committee may cooperate or enter into formal agreements with any other agency of this State or its subdivisions or with any agency of any other state or of the federal government for the purpose of enforcing any of the provisions of this Article. (1973, c. 556, s. 13.)

§§ 106-65.37 to 106-65.41: Reserved for future codification purposes.

ARTICLE 4D.

North Carolina Biological Organism Act.

§ 106-65.42. Short title. — This Article shall be known as the "North Carolina Biological Organism Act." (1973, c. 713, s. 2.)

Editor's Note. — Session Laws 1973, c. 713, s. 6(a) contains a severability clause.

§ 106-65.43. Purpose. — The purpose of this Article is to regulate the production, sale, use and distribution of biological organisms that may have an adverse effect on the environment. (1973, c. 713, s. 1.)

§ 106-65.44. Definitions. — For the purposes of this Article, unless the context clearly requires otherwise:

(1) The term "biological organism" means any plant, lower animal, virus or disease causal agent intended for release into the environment; or, an organism which affects the environment by its presence or absence.
(2) The term "Board" means North Carolina Board of Agriculture.
(3) The term "Commissioner" means the Commissioner of Agriculture of North Carolina or his designated agent or agents.
(4) The term "Division of Entomology" means the Division of the Department of Agriculture so named. (1973, c. 713, s. 3.)

§ 106-65.45. Authority of the Board to adopt regulations. — The Board of Agriculture is hereby authorized to adopt regulations to implement and carry out the purposes of this Article so as to protect the environment from detrimental importation, rearing, sale, and/or release of insects, parasites, predators and other biological organisms in North Carolina, and to protect organisms that are beneficial to man and/or his environment. No viable biological organism shall be brought into North Carolina, reared, collected, propagated or offered for sale or released except under such conditions as are prescribed by regulations adopted under the provisions of this Article. (1973, c. 713, s. 4.)

§ 106-65.46. Commissioner of Agriculture to enforce Article; further authority of Board. — It shall be the duty of the Commissioner to exercise the powers and duties imposed upon him by this Article and such regulations as shall be adopted under these provisions for the purpose of protecting the environment from adverse effects of biological organisms released into the environment of North Carolina and to protect beneficial biological organisms in the State. The Board is hereby authorized to cause importation, collection, release, destruction and propagation of beneficial organisms when such action is deemed to be in the best interest of North Carolina and its environment. The Board is authorized to promote and/or regulate businesses, persons or agencies engaged in the importation, collection, rearing, sales, release, or use of biological organisms. The Board is authorized to establish standards of positive identification, purity of culture or colony, freedom from disease and hyperparasites of biological organisms and to establish standards of competence and responsibility for the private practitioner engaged in the propagation, use, distribution, release or sale of biological organisms.

The Commissioner is hereby authorized to cause or cooperate in management or mitigation programs to be conducted against such plant, environmental, or nuisance pests as can be controlled in an economically, ecologically, and biologically sound manner. The Board is authorized to cause use of pesticides, parasites, predators, pheromones, genetic material, and other control techniques

which are consistent with the pesticide, environmental and other laws applicable in the State of North Carolina.

The Commissioner shall have authority to designate such employees of the North Carolina Department of Agriculture and/or to enter into cooperative agreements with other governmental agencies as may be needed to carry out the duties and exercise the powers provided by this Article. Persons collaborating with the Division of Entomology may also be designated by the Commissioner as agents for the purpose of this Article. (1973, c. 713, s. 5.)

§ 106-65.47. Authority under other statutes not abrogated; memoranda of understanding. — The provisions of this Article shall in no way abrogate the authority as defined in other Articles of the General Statutes of the State of North Carolina as previously enacted. The Commissioner is hereby authorized to enter into memoranda of understanding with other State and federal agencies and individuals concerning biological organisms or pest mitigation programs when such action is desirable to ensure cooperation and prevent conflicts of interest. (1973, c. 713, s. 6.)

§ 106-65.48. Criminal penalties; violation of law or regulations. — If anyone shall interfere with or attempt to interfere with the Commissioner or any of his agents, while engaged in the performance of his duties under this Article, or shall violate any provision of this Article or any regulation of the Board of Agriculture adopted pursuant to this Article, he shall be guilty of a misdemeanor and shall be fined not less than fifty dollars ($50.00) nor more than two hundred fifty dollars ($250.00), or imprisoned for not less than 10 nor more than 30 days, for each offense. Each day's violation shall constitute a separate offense. (1973, c. 713, s. 7.)

§ 106-65.49. Article not applicable in certain cases. — The provisions of this Article and/or regulations promulgated hereunder shall not apply to:

(1) Any virus, serum, toxin, antitoxin, vaccine, blood, blood component or derivative, allergenic product, or other product propagated or manufactured and prepared at an establishment holding an unsuspended and unrevoked license issued pursuant to section 351 of the Public Health Service Act (42 U.S.C. section 262) and regulations promulgated thereunder;

(2) Any finished virus, serum, toxin, antitoxin, vaccine, blood, blood component or derivative, allergenic product or other biological product shipped prior to licensing for development or investigational purposes in compliance with the requirements of the Federal Food, Drug and Cosmetic Act (21 U.S.C. section 301 et seq.) or the Animal Virus, Serum, and Toxin Law of March 4, 1913 (37 Stat. 832; 21 U.S.C. section 151 et seq.), and rules and regulations promulgated thereunder; and

(3) Any etiological agent shipped in accordance with regulations promulgated under section 361 of the Public Health Service Act (42 U.S.C. section 264). (1973, c. 1091.)

ARTICLE 5.

Seed Cotton and Peanuts.

§ 106-66. Sale of seed cotton or peanuts. — If any person shall buy, sell, deliver or receive for a price, or for any reward whatever, any cotton in the seed where the quantity is less than what is usually baled, or any peanuts, and shall fail to enter upon a book to be kept by him for such purpose, and to be open to inspection by the public at all business hours, the date of such buying or receiving, the number of pounds in each lot, the true name of the person or

persons from whom bought or received and that he is the owner thereof, the name of the owner of the land on which such cotton is raised, and the price paid for the same per pound, he shall be guilty of a misdemeanor, and upon conviction be punished by a fine not exceeding fifty dollars ($50.00) or imprisoned not exceeding 30 days. In all prosecutions under this section it shall only be necessary for the State to allege and prove that the defendant bought or received the seed cotton or peanuts as charged, and the burden shall be upon the defendant to show that the provisions of this section have been complied with. (1887, c. 199; 1905, cc. 201, 523; Rev., s. 3812; C. S., s. 5083; 1929, c. 281, s. 1.)

Constitutionality. — As to constitutionality of statute similar to this section, see State v. Moore, 104 N.C. 714, 10 S.E. 143 (1889).

§ 106-67. Traveling seed cotton buyers must report; failure a misdemeanor. — Any person engaged in traveling from house to house or from place to place buying or trading for seed cotton shall keep a correct record of the name and post-office address of each person from whom he buys or with whom he trades for seed cotton, together with the number of pounds he buys or trades for from each person and the amount paid in each case.

On or before the third day of each month such person shall file a sworn statement with the clerk of the superior court of the county in which he made such purchases or trades for seed cotton, showing the name and post-office address of each person from whom he bought or with whom he traded during the next preceding month, together with the amount paid and the number of pounds of such cotton received from each person.

Any person failing or refusing to comply with this section shall be guilty of a misdemeanor for each offense, and upon conviction shall be fined not exceeding fifty dollars ($50.00) or imprisoned not more than 30 days. (1919, c. 43; C. S., s. 5084.)

ARTICLE 5A.

Marketing of Farmers Stock Peanuts.

§ 106-67.1. Purpose of Article. — The purpose of this Article is to promote fair trade practices among growers, handlers and buyers in the selling and buying of farmers stock peanuts, so as to ensure fair grading, weighing, labeling, inspecting and computing of purchase price. (1957, c. 1053, s. 1.)

§ 106-67.2. Licenses to buy peanuts required; purchases for seed excepted. — Each person, firm or corporation that buys one ton or more of farmers stock peanuts from producers for his account or the account of others during any calendar year shall obtain a license from the Commissioner of Agriculture each year to conduct such business. This Article shall not apply to purchasers who buy peanuts for seed purposes only. (1957, c. 1053, s. 2.)

§ 106-67.3. Issuance of license; fee; effective period; use of fees collected. — (a) The Commissioner of Agriculture shall issue a license to any person, firm or corporation desiring to buy farmers stock peanuts upon the receipt of a prescribed application accompanied by a ten dollar ($10.00) license fee; provided, however, that the Commissioner may withhold the issuance of a license to any applicant who has been convicted of violating any provision of this Article until the Commissioner has been given reasonable assurance that the applicant will comply with the provisions of this Article and the rules and regulations adopted pursuant thereto.

(b) The effective period of the license shall be from July 1 through June 30 of each year.

(c) The moneys collected for license fees shall be used only for the administration and enforcement of the provisions of this Article. (1957, c. 1053, s. 2.)

§ 106-67.4. Advisory Committee. — The Commissioner of Agriculture shall appoint an Advisory Committee consisting of five members: two members to represent North Carolina peanut growers, at least one of whom shall represent the membership of the North Carolina Peanut Growers' Association; one member to represent the Cooperative Marketing Association serving the peanut growers of North Carolina; one member to represent the North Carolina peanut commission buyers; and one member to represent the peanut millers and shellers of North Carolina. The term of office of each member shall commence on July 1 of each year, or as soon thereafter as he is appointed and continue to the following June 30.

The duties of this Committee shall be to act in an advisory capacity to the Commissioner of Agriculture and the North Carolina State Board of Agriculture in formulating rules and regulations and in other matters relating to the administration of this Article. (1957, c. 1053, s. 3.)

§ 106-67.5. False certificates, etc.; false representations. — It shall be unlawful for any person, firm or corporation knowingly to falsely make, issue, alter, forge or counterfeit any official certificate, memorandum, or falsely represent the weight, grade, class, quantity or condition or to knowingly represent that the peanuts have been officially inspected or graded (by an authorized government inspector or grader) when such product in fact has not been so graded or inspected. (1957, c. 1053, s. 4.)

§ 106-67.6. Inspections and investigations by Commissioner. — In order to carry out the purposes of this Article effectively, the Commissioner of Agriculture is authorized to inspect or investigate transactions for the sale or delivery of farmers stock peanuts to persons acting as handlers; to require verified reports and accounts of all authorized handlers; to examine books, accounts, memoranda, equipment, warehouses, storage and other facilities and articles connected with the business of handlers of farmers stock peanuts. (1957, c. 1053, s. 5.)

§ 106-67.7. Rules and regulations. — The North Carolina State Board of Agriculture is hereby authorized to adopt such reasonable rules and regulations as may be necessary for the proper administration and enforcement of this Article. (1957, c. 1053, s. 6.)

§ 106-67.8. Penalty; suspension of license. — Any person, firm or corporation violating any provision of this Article, or any regulation adopted pursuant to this Article, shall be guilty of a simple misdemeanor punishable by a fine of not more than fifty dollars ($50.00) or imprisonment for not more than 30 days, in the discretion of the court.

The Commissioner of Agriculture is hereby authorized to suspend the license of any person, firm or corporation, upon being convicted of violating any provision of this Article, for any period of the remaining part of the licensed year within his discretion. (1957, c. 1053, s. 7.)

Article 6.

Cottonseed Meal.

§ 106-68. Cottonseed meal defined; inspection tax. — Cottonseed meal is a product of the cottonseed only, composed principally of the kernel with such portion of the fiber or hull and oil as may be left in the course of manufacture of cottonseed oil, and when sold for use as fertilizer or feed shall be subject to an inspection tax of twenty-five cents (25¢) per ton and be subject to inspection as other fertilizers or fertilizing materials, unless sold to manufacturers for use in manufacturing fertilizers or feed. (1917, c. 242, s. 1; C. S., s. 4704; 1939, c. 286.)

§ 106-69. Bags to be branded with specified particulars. — All cottonseed meal offered for sale, unless sold to manufacturers for use in manufacturing fertilizers or feed, shall have plainly branded on the bag containing it, or on the tag attached thereto, the following data:

(1) Cottonseed meal (with brand and grade).
(2) Weight of package.
(3) Ammonia and protein.
(4) Name and address of manufacturer. (1917, c. 242, s. 2; C. S., s. 4705.)

§ 106-70. Grades and standards established. — No person, firm, or corporation shall offer for sale any cottonseed meal except as provided in G.S. 106-69, graded and classed as follows:

(1) Prime cottonseed meal by analysis must contain at least seven and one half percent (7½%) of ammonia or thirty-eight and fifty-six one-hundredths percent (38.56%) of protein.
(2) Good cottonseed meal by analysis must contain at least seven percent (7%) of ammonia, or thirty-six and no one-hundredths percent (36%) of protein.
(3) Ordinary cottonseed meal by analysis must contain at least six and one half percent (6.5%) of ammonia, or thirty-three and forty-four hundredths (33.44%) percent of protein. (1917, c. 242, s. 3; C. S., s. 4706.)

Purpose. — The purpose of this Article is to promote agriculture by insuring the sale of fertilizers containing plant food in certain proportions and of sufficient quality and quantity and to protect those who cultivate the soil from imposition and fraud. State v. Faulkner, 175 N.C. 787, 95 S.E. 171 (1918).

§ 106-71. Rules to enforce statute; misdemeanor. — The Board of Agriculture is empowered and directed to make such rules and regulations as are necessary to a proper carrying into effect of the provisions of this Article, and to provide for all such tags as manufacturers may demand, upon paying the tax therefor. Any person willfully violating any of the regulations made by the Board of Agriculture in connection with the provisions of this Article shall be guilty of a misdemeanor. (1917, c. 242, s. 4; C. S., s. 4707.)

§ 106-72. Sales without tag; misuse of tag; penalty; forfeiture. — Every merchant, trader, manufacturer, or agent who shall sell or offer for sale any cottonseed meal without having attached thereto such labels, stamps, and tags as are required by law, or who shall use the required tag a second time to avoid the payment of the tonnage charge, and every person who shall aid in the fraudulent selling or offering for sale of any cottonseed meal, shall be liable to a penalty of the price paid the manufacturer for each separate bag, barrel, or package sold, offered for sale, or removed, to be recovered by the Commissioner of Agriculture by suit brought in the name of the State, and any amount so recovered shall be paid one half to the informant and one half to the State

Treasurer for the use of the Department of Agriculture. If any such cottonseed meal shall be condemned, as provided by law, it shall be the duty of the Department to have an analysis made of the same; cause printed tags or labels expressing the proper grade to be put upon each bag, barrel, or package, and shall fix the commercial value at which it may be sold; and it shall be unlawful for any person to sell, offer for sale, or remove any such cottonseed meal, or for any agent of any railroad or other transportation company to deliver any such cottonseed meal in violation of this section. (1917, c. 242, s. 4; C. S., s. 4708.)

Penalty Not Applicable to Purchaser. — In construing a former statute of similar import, it was held that the penalty applies to the manufacturer or anyone, either as principal or agent, who sells or offers to sell, or removes the fertilizer, and the word "remove" does not apply to the purchaser who receives the fertilizer not for sale, but for use, and when the only removal by him is taking the fertilizer from the railroad station and then distributing the same under his crops. Johnson v. Carson, 161 N.C. 371, 77 S.E. 307 (1913).

§ 106-73. Sales contrary to Article a misdemeanor. — Any person, firm, or corporation who shall sell or offer for sale or shall act as agent of or broker for the manufacturer of or dealer in any cottonseed meal contrary to the provisions above set forth shall be guilty of a misdemeanor. (Rev., s. 3814; 1917, c. 242, s. 5; 1919, c. 13, s. 2; C. S., s. 4709.)

Liability. — The fact that neither knowledge of the defect nor intent to defraud is made an element in the criminal offense is strong reason for confining the statute to the manufacturer, who should be held to have knowledge of the composition of the fertilizer he offers for sale, and to the owner, not a manufacturer, and his agent with authority to sell, who have the opportunity to test the fertilizer before they sell it. State v. Faulkner, 175 N.C. 787, 95 S.E. 171 (1918).

Applied in State v. Southern Cotton Oil Co., 154 N.C. 635, 70 S.E. 741 (1911).

§ 106-74. Forfeiture for unauthorized sale; release from forfeiture. — All cottonseed meal sold or offered for sale contrary to the provisions above set forth shall be subject to seizure, condemnation, and sale by the Commissioner of Agriculture. The net proceeds from such sale shall be placed in the general fund of the Department and accounted for upon its books. The Commissioner, however, shall have the discretion to release the meal so seized and condemned upon compliance with the law as set forth above and the payment of all costs and expenses incurred by the Department in any proceedings connected therewith. (1917, c. 242, s. 5; C. S., s. 4710.)

§ 106-75. Method of seizure and sale on forfeiture. — Such seizure and sale shall be made under the direction of the Commissioner of Agriculture by an officer or agent of the Department; the sale to be made at the courthouse door in the county in which the seizure is made, after 30 days advertisement in some newspaper published in said county, or if no newspaper is published in said county, then by like advertisement in a newspaper published in the nearest county thereto having a newspaper. The advertisement shall state the grade of the meal, the quantity, why seized and offered for sale. (1917, c. 242, s. 5; C. S., s. 4711.)

§ 106-76. Collection and analysis of samples. — The Department of Agriculture shall have the same authority and powers for taking and analyzing samples of cottonseed meal as are provided in case of commercial fertilizers and fertilizer materials; and the same procedure as to law and regulations shall be followed in taking such samples of cottonseed meals as are prescribed and followed for taking samples of fertilizer and fertilizer materials. (1919, c. 271; C. S., s. 4712.)

§ 106-77. Sales below guaranteed quality; duties of Commissioner. — When the Commissioner of Agriculture shall be satisfied that any cottonseed meal is five percent (5%) below the guaranteed analysis, it shall be his duty to assess twice the value of said deficiency against the manufacturer, and if said cottonseed meal shall fall as much as ten percent (10%) below the guaranteed analysis it shall be his duty to assess three times the value of said meal and require that his findings of said deficiency be made good to all persons who, in the opinion of the Commissioner, have purchased the said meal; and the Commissioner may seize any meal belonging to said company, to the value of the deficiency, if the deficiency shall not be paid within 30 days after notice to the company. If the Commissioner shall be satisfied that the deficiency in analysis was due to intention or fraud of the manufacturer, then the Commissioner shall assess and collect from the manufacturer twice the amount above provided for and pay over the same to parties who purchased said meal. If any manufacturer shall resist such collection or payment, the Commissioner shall immediately publish the analysis and the facts in the Bulletin and in such newspapers in the State as he may deem necessary. (1917, c. 242, s. 7; C. S., s. 4713.)

§ 106-78. Adulteration prohibited. — It shall be unlawful for any manufacturer to adulterate cottonseed meal in the process of manufacture or otherwise. (1917, c. 242, s. 8; C. S., s. 4714.)

ARTICLE 7.

Pulverized Limestone and Marl.

§ 106-79. Board of Agriculture authorized to make and sell lime to farmers. — The North Carolina Board of Agriculture is authorized and directed, for the purpose of furnishing marl or limestone to the farmers of the State, to make such arrangements as they deem advisable for this purpose, and to this end may lease or purchase oyster shells in large quantities and beds of limestone, and erect machinery suitable for the preparation of the material for use by the farmers; and any lime so prepared and any by-products shall be sold for agricultural purposes to the citizens of the State at a reasonable cost which shall produce an amount of money sufficient to maintain and operate the plant. (1919, c. 182, s. 1; C. S., s. 4715.)

§ 106-80. Convict labor authorized. — With the approval of the Governor, when requested by the Board of Agriculture, the chairman of the Board of Transportation may furnish a superintendent with a squad of able-bodied convicts, not to exceed 50, to do such work as the Commissioner, with the authority of the Board, may deem necessary to mine, prepare, load and dispose of the material. The Board shall pay the State quarterly such amount as shall be agreed upon by the chairman of the Board of Transportation and the Board of Agriculture for their work, out of the proceeds of the sales, and the State shall guard, feed, clothe, and work such convicts: Provided, that after the first year's operations the expenses of the work shall not exceed the amount of the sales. (1919, c. 182, s. 2; C. S., s. 4716; 1933, c. 172, s. 18; 1957, c. 65, s. 11; 1973, c. 507, s. 5.)

Editor's Note. — The 1973 amendment substituted "Board of Transportation" for "State Highway Commission" in two places.

ARTICLE 8.

Sale, etc., of Agricultural Liming Material, etc.

§ 106-81. Regulation of sale, etc., of agricultural liming material, etc. — All agricultural liming material, agricultural liming material with potash, and land plaster, hereinafter named either as the aforesaid separate items, or collectively as "materials coming under this Article," or as "said materials," to be sold, offered, or exposed for sale in this State, shall be subject to regulation as provided by the following sections of this Article. (1941, c. 275, s. 1.)

§ 106-82. Registration of brands by manufacturers and vendors. — Every manufacturer or vendor proposing to sell, offer or expose for sale in this State, the materials coming under this Article shall, annually on or before the first day of January of each year, or before offering said materials for sale in this State, register with the Commissioner of Agriculture, on forms to be furnished by said Commissioner, each brand of the said materials that he proposes to offer for sale during the next ensuing calendar year, or remainder thereof, giving for each brand the information prescribed in the following subdivisions:

(1) Net weight when sold in packages.

(2) A brand or trade name truly descriptive of the product.

(3) The guaranteed analysis showing:

a. In case of agricultural liming materials, the minimum percent of calcium expressed as calcium carbonate ($CaCO_3$) and of magnesium expressed as magnesium carbonate ($MgCO_3$) if the product be unburned or a mixture of both burned and unburned material; or as calcium oxide (CaO) and magnesium oxide (MgO) if the product be in the burned state and, in either case, the total neutralizing value expressed as calcium carbonate equivalent or neutralizing equivalent, and the fineness of the material, excepting that guarantee of screen analysis shall not be required for the products from completely burned limestone or shells. (The terms "calcium carbonate equivalent" and "neutralizing equivalent," for the purpose of this Article, shall mean one and the same thing. Fineness shall be determined by screens complying with the specifications of the United States Bureau of Standards.)

b. In case of agricultural liming material with potash, the same requirement as for agricultural liming material, subdivision (3)a of this section, but including also the minimum percent of available potash as the oxide (K_2O). (The potash content of agricultural liming material with potash shall not be below four percent (4%), and the guarantee for said potash content shall be in whole numbers only.)

c. In case of land plaster, the minimum percent of calcium sulfate ($CaSO_4$).

(4) The name and address of the manufacturer or vendor guaranteeing the registration.

(5) In case of combinations of materials from different sources, the source, chemical form, and minimum percent of each material in truly descriptive terms. (1941, c. 275, s. 2.)

§ 106-83. Labeling. — All of the said materials sold, offered, or exposed for sale in this State shall have attached thereto, or be accompanied by a plainly printed statement giving the information as required under G.S. 106-82, subdivisions (1), (2), (3), (4) and (5). In case of materials sold in packages, the said information shall be plainly printed upon the package, or upon a tag or label attached thereto, of such quality and in such manner that it shall withstand normal handling, and, in case of material sold in bulk, the said statement shall

be delivered to the purchaser either with the material, or with the invoice therefor. (1941, c. 275, s. 3.)

§ 106-84. Registration and tonnage fees; tags showing payment; reporting system; license certificates. — (a) For the purpose of defraying expenses connected with the registration, inspection and analysis of the materials coming under this Article, there shall be paid, by the manufacturers or vendors, to the Department of Agriculture, for each brand or grade of said materials registered as required under G.S. 106-82, an annual registration fee of five dollars ($5.00) for each calendar year or part thereof, said fee to be paid at the time of registration.

(b) Likewise, in addition to the above stated registration fee there shall be paid upon said materials sold in this State, in the manner specified under subsection (c) of this section, tonnage fees as follows: For agricultural liming material, five cents (5¢) per ton; for agricultural liming material with potash, twenty-five cents (25¢) per ton; and for land plaster, five cents (5¢) per ton; excepting that these fees shall not apply to materials which are sold to fertilizer manufacturers for the sole purpose of use in the manufacture of fertilizer.

(c) Each bag, parcel, or shipment of said materials shall have attached thereto a tag, or label, to be furnished by the Department of Agriculture, stating that all charges specified in this Article have been paid, and the Commissioner of Agriculture, with the advice and consent of the Board of Agriculture is hereby empowered to prescribe a form for such tags, or labels, and to adopt such regulations as will insure enforcement of this Article. Whenever any manufacturer or vendor shall have paid the required charges, his goods shall not be liable to any further tax, whether by city, town or county. Tax tags or labels shall be issued each year by the Commissioner of Agriculture, and sold to persons applying for same at the tax rate provided herein. Tags or labels left in the possession of persons registering the materials coming under this Article, at the end of a calendar year, may be exchanged for tags or labels for the next succeeding year.

Any manufacturer, importer, jobber, firm, corporation or person who distributes materials coming under this Article in this State may make application for a permit to report the materials sold and pay the tonnage fees as set forth in subsection (b) of this section, as the basis of said report, in lieu of affixing inspection tags or labels. The Commissioner of Agriculture may, in his discretion, grant such permit. The issuance of all permits will be conditioned on the applicant's satisfying the Commissioner that he has a good bookkeeping system and keeps such records as may be necessary to indicate accurately the tonnage of liming materials, etc., sold in the State and as are satisfactory to the Commissioner of Agriculture, and granting the Commissioner, or his duly authorized representative, permission to examine such records and verify the statement. The report shall be quarterly and the tonnage fees shall be due and payable quarterly, on or before the tenth day of January, April, July, and October of each year, covering the tonnage of liming materials, etc., sold during the preceding quarter. The report shall be under oath and on forms furnished by the Commissioner. If the report is not filed and the tonnage fees paid by the tenth day following the date due or if the report be false, the Commissioner may revoke the permit, and if the tonnage fees be unpaid after a 15-day grace period, the amount shall bear a penalty of ten percent (10%) which shall be added to the tonnage fees due and shall constitute a debt and become the basis of judgment against the securities or bonds which may be required. In order to guarantee faithful performance with the provisions of this paragraph each manufacturer, importer, jobber, firm, corporation or person shall, before being granted a permit to use the reporting system, deposit with the Commissioner cash in the amount of two hundred fifty dollars ($250.00) or securities acceptable to the Commissioner of a value of at least two hundred fifty dollars ($250.00)

or shall post with the Commissioner a surety bond in like amount, executed by some corporate surety company authorized to do business in North Carolina. The Commissioner shall approve all such securities and bonds before acceptance.

(d) To manufacturers or vendors of the materials covered in this Article, who have registered their brands of the said materials and paid registration fees as required herein, shall be issued by the Commissioner of Agriculture, without further charge, certificates licensing said manufacturers or vendors, themselves or through their agents, to sell in this State the brands of materials named in said certificate, for the period of time designated therein. (1941, c. 275, s. 4; 1949, c. 828.)

§ 106-85. Report of sales. — In addition to the statement required under G.S. 106-82, each manufacturer or vendor of the materials covered in this Article shall, on or before the first day of February of each year, file with the Department of Agriculture a written report showing the total number of net tons of each brand and grade of the said materials sold by him, or his representatives or agents in this State, during the last preceding year. License for the sale of said materials within this State shall not be issued for a succeeding year to any manufacturer or vendor for the continued sale of his product unless and until said report has been made. (1941, c. 275, s. 5.)

§ 106-86. Administration; inspections, sampling and analysis. — It shall be the duty of the Commissioner of Agriculture to institute the necessary proceedings and have prepared the necessary equipment to put into effect the provisions of this Article, and to authorize the collecting of official samples of the materials covered by it, to have them analyzed, and to have results published for the information of the public. For this purpose such inspectors or representatives as he may duly authorize shall have full access, ingress and egress to and from all places of business, manufacture, storage, transportation, handling or sale of any of the said materials. They shall also have power to open any container or package containing or supposed to contain any of the said materials, and to take therefrom samples for analysis. The official methods and recommendations of the Association of Official Agricultural Chemists as to sampling and analyzing shall be used in administering this Article. (1941, c. 275, s. 6.)

§ 106-87. Deficiencies; refunds to consumers. — Should any of the materials coming under this Article be found, by procedures authorized thereunder, to be deficient in the constituents as claimed by the manufacturer or vendor thereof, said manufacturer or vendor, upon being officially notified of such deficiency by the Commissioner of Agriculture, shall, within 90 days following such notification, make refunds to the consumers of the deficient materials as follows: In case of "agricultural liming material" or "agricultural liming material with potash," excepting potash deficiency of the latter, if the deficiency be five percent (5%) or more, there shall be refunded an amount equal to three times the value of such deficiency. In case of "potash" deficiency in "agricultural liming material with potash," there shall be refunded an amount equal to three times the value of the deficiency, if such deficiency is in excess of 40 points (which shall mean 0.40 of one percent) on goods guaranteed four percent (4%); 50 points (which shall mean 0.50 of one percent) on goods that are guaranteed five percent (5%) up to and including eight percent (8%); and 60 points (which shall mean 0.60 of one percent) on goods guaranteed nine percent (9%) and up to and including twenty percent (20%); and 100 points (which shall mean 1.00 percent) on goods guaranteed over twenty percent (20%); and in case of land plaster, for deficiencies in excess of one percent (1%), there shall be refunded an amount equal to three times the value of the deficiency. Values shall be based on the selling price of said materials. When said consumers cannot be found within the above specified time, refunds shall be forwarded to the Commissioner of

Agriculture for deposit with the State Treasurer to the credit of the Department of Agriculture, where said refund shall be held for payment to the proper consumer upon order of said Commissioner. Where the consumer to whom the refund is due cannot be found within a period of two years, such refund shall, after said period, revert to the Department of Agriculture for expenditure by said Commissioner in promoting the agricultural program of the State. (1941, c. 275, s. 7.)

§ 106-88. Violations and penalties. — Any person or persons selling, offering or exposing for sale in this State any of the materials covered in this Article, without first having registered said materials, paid the fees required, secured the required license, and otherwise complied with the requirements of this Article; or who shall have caused to be submitted, or to be associated with said registrations or materials, false, fraudulent, or misleading statements; or who shall have caused to be incorporated into said materials any substances which shall be harmful to plants or plant growth; shall be guilty of a misdemeanor, and on conviction shall be sentenced to pay a fine not less than ten dollars ($10.00) nor more than fifty dollars ($50.00) for the first offense and not less than one hundred dollars ($100.00) for each subsequent offense. (1941, c. 275, s. 8.)

§ 106-89. Certified analysis as evidence. — In the trial of any suit or action wherein there is called in question the value of composition of any of the materials covered by this Article, a certified statement of the analysis made by the chemists of the Department of Agriculture shall be admissible as prima facie evidence of the content, value, or composition of said materials. (1941, c. 275, s. 9.)

§ 106-90. Revocation of licenses; seizure of materials. — The Commissioner of Agriculture is hereby authorized to revoke any license and require forfeit of fees paid under such license when it is ascertained that the registration upon which said license was issued has given false information in its statement relative to the kind, quality, composition or fineness of the materials sold, or offered for sale, under the provisions of this Article; and to seize and withhold from sale or distribution any such materials where it is shown that they are being dispensed in violation of said Article. (1941, c. 275, s. 10.)

§ 106-91. Regulations and standards. — The Commissioner of Agriculture, under the authority of the Board of Agriculture, is further empowered to prescribe and enforce such reasonable rules and regulations relating to the sale of the materials covered in this Article as are consistent with the purpose of the Article and are deemed necessary to carry into effect its full intent and meaning; and, conjointly with the State Board of Agriculture and the director of the North Carolina experiment station, to formulate and prescribe such definitions and standards as may be required for said purpose. (1941, c. 275, s. 11.)

§ 106-92. Construction of Article. — Nothing in this Article shall be construed to restrict or avoid sales or exchanges of the materials coming under this Article to each other by importers, manufacturers or manipulators who mix said materials for sale, or as preventing the free and unrestricted shipments of said materials to manufacturers or manipulators who have registered their brands as required by the provisions of this Article. (1941, c. 275, s. 12.)

Article 9.

Commercial Feedingstuffs.

§§ 106-93 to 106-110: Repealed by Session Laws 1973, c. 771, s. 19.

Cross References. — For present provisions covering the subject matter of the repealed sections, see §§ 106-284.30 through 106-284.46. As to the effect of the repeal upon existing rules and regulations of the Department of Agriculture and other State agencies, see note to § 106-284.30.

ARTICLE 10.

Mixed Feed Oats.

§ 106-111. Unlawful to sell mixed feed oats unless ground. — It shall be unlawful for any person, firm, or corporation to sell, or offer or expose for sale or distribution within the State, the feeding material known as "mixed feed oats" unless it first be ground. The duty of enforcing this section and carrying out its provisions and requirements shall be vested in the Commissioner of Agriculture. The Department of Agriculture shall adopt such rules and regulations as may be necessary for the efficient enforcement of this section. Every violation of the provisions of this section shall be deemed a misdemeanor and punishable by a fine not to exceed one hundred dollars ($100.00). (1931, c. 106.)

ARTICLE 11.

Stock and Poultry Tonics.

§ 106-112. Application and affidavit for registration. — Before any condimental, patented, proprietary or trademarked "stock or poultry tonic," "regulator," "conditioner," or "vermicide" or any similar preparation, regardless of the specific name or title under which it is sold, which is represented as containing "tonic," "remedial" or other "medicinal" properties for domestic animals or poultry, either is sold or offered for sale in this State, by sample or otherwise, the manufacturer, importer, dealer, agent, or person who causes it to be sold or offered for sale shall file with the Commissioner of Agriculture an application for registration on a form to be furnished by said Commissioner, the execution of which shall be sworn to before a notary public or other proper official for registration, stating the name of the manufacturer, the location of the principal office of the manufacturer, the name, brand, or trademark under which said preparation or preparations will be sold, and a statement of the ingredients of said preparation, together with a labeled package of said preparation showing claims made for same, which labeling shall not be changed during the year for which the registration is made without consent of the Commissioner of Agriculture. The Commissioner of Agriculture shall decline to register a preparation that is injurious to the health of domestic animals or poultry, or that conflicts with the requirements of the North Carolina Food, Drug and Cosmetic Law, or that the name, trademark, or label under which the preparation is sold may mislead or deceive the purchaser in any way, or that any statements, designs, or devices on the label or package regarding the substances contained therein are not true and correct, or that any claims made for the feeding, condimental, tonic, or medicinal value are false or misleading in any particular. (1909, c. 556, s. 1; C. S., s. 4742; 1943, c. 226, s. 1.)

Note Uncollectible for Noncompliance. — Where a note is given in consideration of the sale of a foodstuff or "conditioner" coming within the provisions of this section, §§ 106-113, 106-114 and 106-119 and the requirements of these sections have not been complied with by the seller, the note is uncollectible against the purchaser or maker. Miller v. Howell, 184 N.C. 119, 113 S.E. 621 (1922).

§ 106-113. Registration fee. — For the expense incurred in registering, inspecting, and analyzing "stock or poultry tonics," "regulators," "conditioners," "vermicides," and similar preparations defined in G.S. 106-112, a registration fee of twenty dollars ($20.00) for each separate brand shall be paid by the manufacturers or sellers of same to the Commissioner of Agriculture during the month of January in each year, said fees to be used by the Commissioner of Agriculture for executing the provisions of this Article. (1909, c. 556, s. 2; C. S., s. 4743; 1943, c. 226, s. 2.)

§ 106-114. Sale of unregistered tonics a misdemeanor. — Any person, company, corporation, or agent that shall offer for sale or expose for sale any package or sample or any quantity of any condimental, patented, proprietary, or trademarked "stock or poultry tonic," "regulator," "conditioner," "vermicide," or any similar preparation, regardless of the title under which it is sold, which has not been registered as required by G.S. 106-112, or which may have been registered, but subsequently found by an analysis or examination made by or under the direction of the Commissioner of Agriculture to violate any of the provisions of this Article, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in the sum of fifty dollars ($50.00) for the first offense and in the sum of one hundred dollars ($100.00) for each subsequent offense. (1909, c. 556, s. 3; C. S., s. 4744; 1943, c. 226, s. 3.)

§ 106-115. Notice of violation charged; hearing before Commissioner. — Whenever the Commissioner of Agriculture becomes cognizant of any violation of any of the provisions of this Article he shall immediately notify, in writing, the manufacturer, importer, jobber, or dealer, if same be known. Any party so notified shall be given an opportunity to be heard, under such rules and regulations as may be prescribed by the Commissioner and the Board of Agriculture. (1909, c. 556, s. 4; C. S., s. 4745.)

§ 106-116. Issuance of "stop-sale" orders by Commissioner; confiscation or sale of products. — If it appears that any of the provisions of this Article have been violated, the Commissioner of Agriculture or his authorized representative is hereby authorized to issue a "stop-sale" order which shall prohibit further sale of any product offered in violation of this Article until the law has been complied with or said violation has otherwise been legally disposed of. The Commissioner of Agriculture or his authorized representative is further authorized to confiscate and seize any products sold or offered for sale in violation of this Article and shall have the authority to sell said product if it can be made to conform to this Article or to destroy same if it cannot be made to conform with this Article. Such sale shall be made at the courthouse door in the county in which the seizure is made, after 30 days' advertisement in some newspaper published in such county, or if no newspaper is published in such county, then by like advertisement in a newspaper published in the nearest county thereto having a newspaper. The advertisement shall state the name of the product, the quantity, why seized and offered for sale. The proceeds from such sale, after deducting the necessary expense of said sale, shall be deposited with the State Treasurer for the use of the Department of Agriculture. (1909, c. 556, s. 4; C. S., s. 4746; 1941, c. 199, s. 1.)

§ 106-117. Prosecution of violations. — If any person, firm or corporation shall violate any provision of this Article, it shall be the duty of the Commissioner of Agriculture or his authorized representative to cause proceedings to be commenced and prosecuted in a court of competent jurisdiction in the district where the violation occurred. (1909, c. 556, s. 5; C. S., s. 4747; 1941, c. 199, s. 2.)

§ 106-118. Certificate of analyst as evidence. — In all prosecutions arising under this Article the certificate of the analyst or other officer making the analysis or examination, when duly sworn to by such officer, shall be prima facie evidence of the fact or facts therein certified. (1909, c. 556, s. 4; C. S., s. 4748.)

§ 106-119. Purpose of Article. — This Article does not repeal any part of any concentrated commercial feeding-stuff law which may be in effect in this State, but is designated to fully cover all preparations commonly known as condimental, patented, proprietary, or trademarked "stock or poultry tonics," "regulators," "conditioners," "vermicides," and all similar preparations used for "tonic," "regulative," or "condition" purposes, and to protect the public from deception and fraud in the sale of these specific products. (1909, c. 556, s. 6; C. S., s. 4749; 1943, c. 226, s. 4.)

Article 12.

Food, Drugs and Cosmetics.

§ 106-120. Title of Article. — This Article may be cited as the North Carolina Food, Drug and Cosmetic Act. (1939, c. 320, s. 1.)

Editor's Note. — For comment on this enactment, see 17 N.C.L. Rev. 400.

§ 106-121. Definitions and general consideration. — For the purpose of this Article:

(1) The term "advertisement" means all representations disseminated in any manner or by any means, other than by labeling, for the purposes of inducing, or which are likely to induce, directly or indirectly, the purchase of food, drugs, devices or cosmetics.

(2) The term "Commissioner" means the Commissioner of Agriculture; the term "Department" means the Department of Agriculture, and the term "Board" means the Board of Agriculture.

(3) The term "contaminated with filth" applies to any food, drug, device or cosmetic not securely protected from dust, dirt, and as far as may be necessary by all reasonable means, from all foreign or injurious contaminations.

(4) The term "cosmetic" means

a. Articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance, and

b. Articles intended for use as a component of any such articles, except that such terms shall not include soap.

(5) The term "device," except when used in subdivision (15) of this section and in G.S. 106-122, subdivision (10), 106-130, subdivision (6), 106-134, subdivision (3) and 106-137, subdivision (3) means instruments, apparatus and contrivances, including their components, parts and accessories, intended

a. For use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; or

b. To affect the structure or any function of the body of man or other animals.

(6) The term "drug" means
   a. Articles recognized in the official United State Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them; and
   b. Articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals; and
   c. Articles (other than food) intended to affect the structure or any function of the body of man or other animals; and
   d. Articles intended for use as a component of any article specified in paragraphs a, b or c; but does not include devices or their components, parts, or accessories.

(7) The term "federal act" means the Federal Food, Drug and Cosmetic Act (Title 21 U.S.C. 301 et seq.; 52 Stat. 1040 et seq.).

(8) The term "food" means
   a. Articles used for food or drink for man or other animals,
   b. Chewing gum, and
   c. Articles used for components of any such article.

(9) The term "immediate container" does not include package liners.

(10) The term "label" means a display of written, printed or graphic matter upon the immediate container of any article; and a requirement made by or under authority of this Article that any word, statement, or other information appear on the label shall not be considered to be complied with unless such word, statement, or other information also appears on the outside container or wrapper, if any there be, of the retail package of such article, or is easily legible through the outside container or wrapper.

(11) The term "labeling" means all labels and other written, printed, or graphic matter
   a. Upon an article or any of its containers or wrappers, or
   b. Accompanying such article.

(12) The term "new drug" means
   a. Any drug the composition of which is such that such drug is not generally recognized, among experts qualified by scientific training and experience to evaluate the safety of drugs, as safe for use under the conditions prescribed, recommended, or suggested in the labeling thereof; or
   b. Any drug the composition of which is such that such drug, as a result of investigations to determine its safety for use under such conditions, has become so recognized, but which has not, otherwise than in such investigation, been used to a material extent or for a material time under such conditions.

(13) The term "official compendium" means the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, official National Formulary, or any supplement to any of them.

(14) The term "person" includes individual, partnership, corporation, and association.

(15) If an article is alleged to be misbranded because the labeling is misleading, or if an advertisement is alleged to be false because it is misleading, then in determining whether the labeling or advertisement is misleading, there shall be taken into account (among other things) not only representations made or suggested by statement, word, design, device, sound, or any combination thereof, but also the extent to which labeling or advertisement fails to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of the article to which the labeling or advertisement relates under the conditions of use prescribed in the

labeling or advertisement thereof or under such conditions of use as are customary or usual.

(16) The representation of a drug, in its labeling or advertisement, as an antiseptic shall be considered to be a representation that it is a germicide, except in the case of a drug purporting to be, or represented as, an antiseptic for inhibitory use as a wet dressing, ointment, dusting powder, or such other use as involves prolonged contact with the body.

(17) The provisions of this Article regarding the selling of food, drugs, devices, or cosmetics, shall be considered to include the manufacture, production, processing, packing, exposure, offer, possession, and holding of any such article for sale; and the sale, dispensing, and giving of any such article; and the supplying or applying of any such article in the conduct of any food, drug or cosmetic establishment. (1939, c. 320, s. 2.)

§ 106-122. Certain acts prohibited. — The following acts and the causing thereof within the State of North Carolina are hereby prohibited:

(1) The manufacture, sale, or delivery, holding or offering for sale of any food, drug, device, or cosmetic that is adulterated or misbranded.

(2) The adulteration or misbranding of any food, drug, device, or cosmetic.

(3) The receipt in commerce of any food, drug, device, or cosmetic that is adulterated or misbranded, and the delivery or proffered delivery thereof for pay or otherwise.

(4) The sale, delivery for sale, holding for sale, or offering for sale of any article in violation of G.S. 106-131 or 106-135.

(5) The dissemination of any false advertisement.

(6) The refusal to permit entry or inspection, or refusal to permit the taking of a sample, as authorized by G.S. 106-140.

(7) The giving of a guaranty or undertaking which guaranty or undertaking is false, except by a person who relied on a guaranty or undertaking to the same effect signed by, and containing the name and address of the person residing in the State of North Carolina from whom he received in good faith the food, drug, device or cosmetic.

(8) The removal or disposal of a detained or embargoed article in violation of G.S. 106-125.

(9) The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of, or the doing of any other act with respect to, a food, drug, device or cosmetic, if such act is done while such article is held for sale and results in such article being misbranded.

(10) Forging, counterfeiting, simulating, or falsely representing, or without proper authority using any mark, stamp, tag, label or other identification device authorized or required by regulations promulgated under the provisions of this Article.

(11) The using, on the labeling of any drug or in any advertisement relating to such drug, of any representation or suggestion that an application with respect to such drug is effective under G.S. 106-135, or that such drug complies with the provisions of such section. (1939, c. 320, s. 3.)

This section applies to adulteration of foods kept for sale. It has no application, therefore, to a controversy involving certain preservation powders for fruits. Smith v. Alphin, 150 N.C. 425, 64 S.E. 210 (1909).

§ 106-123. Injunctions restraining violations. — In addition to the remedies hereinafter provided, the Commissioner of Agriculture is hereby authorized to apply to the superior court for, and such court shall have jurisdiction upon hearing and for cause shown to grant, a temporary or permanent injunction

restraining any person from violating any provision of G.S. 106-122, irrespective of whether or not there exists an adequate remedy at law. (1939, c. 320, s. 4.)

§ 106-124. Violations made misdemeanor. — (a) Any person who violates any of the provisions of G.S. 106-122 shall be guilty of a misdemeanor and shall on conviction thereof be subject to imprisonment in the county jail for not more than six months or a fine of not more than two hundred dollars ($200.00), or both such imprisonment and fine; but if the violation is committed after a conviction of such person under this section has become final, such person shall be subject to imprisonment in the county jail for not more than 12 months, or a fine of not more than four hundred dollars ($400.00), or both such imprisonment and fine.

(b) No person shall be subject to the penalties of subsection (a) of this section, for having violated G.S. 106-122, subdivision (1) or (3) if he establishes a guaranty or undertaking signed by, and containing the name and address of, the person residing in the State of North Carolina from whom he received in good faith the article, to the effect that such article is not adulterated or misbranded within the meaning of this Article, designating this article.

(c) No publisher, radio-broadcast licensee, or agency or medium for the dissemination of an advertisement, except the manufacturer, packer, distributor, or seller of the article to which a false advertisement relates, shall be liable under this section by reason of the dissemination by him of such false advertisement, unless he has refused on the request of the Commissioner of Agriculture to furnish the Commissioner the name and post-office address of the manufacturer, packer, distributor, seller or advertising agency residing in the State of North Carolina who caused him to disseminate such advertisement. (1939, c. 320, s. 5.)

Civil Liability. — Impure and dangerous articles of food, causing death of purchaser, subject the seller to liability in a civil action for damages. Ward v. Sea Food Co., 171 N.C. 33, 87 S.E. 958 (1916).

§ 106-125. Detention of product or article suspected of being adulterated or misbranded. — (a) Whenever a duly authorized agent of the Department of Agriculture finds or has probable cause to believe, that any food, drug, device or cosmetic is adulterated, or so misbranded as to be dangerous or fraudulent within the meaning of this Article, he shall affix to such article a tag or other appropriate marking giving notice that such article is, or is suspected of being, adulterated or misbranded and has been detained or embargoed, and warning all persons not to remove or dispose of such article by sale or otherwise until permission for removal or disposal is given by such agent or the court. It shall be unlawful for any person to remove or dispose of such detained or embargoed article by sale or otherwise without such permission.

(b) When an article detained or embargoed under subsection (a) has been found by such agent to be adulterated, or misbranded, he shall petition a judge of the district, or superior court in whose jurisdiction the article is detained or embargoed for an order for condemnation of such article. When such agent has found that an article so detained or embargoed is not adulterated or misbranded, he shall remove the tag or other marking.

(c) If the court finds that a detained or embargoed article is adulterated or misbranded, such article shall, after entry of the decree, be destroyed at the expense of the claimant thereof, under the supervision of such agent; and all court costs and fees, and storage and other proper expenses, shall be taxed against the claimant of such article or his agent: Provided, that when the adulteration or misbranding can be corrected by proper labeling or processing of the article, the court, after entry of the decree and after such costs, fees, and expenses have been paid and a good and sufficient bond, conditioned that such

article shall be so labelled or processed, has been executed, may by order direct that such article be delivered to the claimant thereof for such labeling or processing under the supervision of an agent of the Department of Agriculture. The expense of such supervision shall be paid by the claimant. Such bond shall be returned to the claimant of the article on representation to the court by the Department of Agriculture that the article is no longer in violation of this Article, and that the expenses of such supervision have been paid.

(d) Whenever any duly authorized agent of the Department of Agriculture shall find in any room, building, vehicle of transportation or other structure, any meat, seafood, poultry, vegetable, fruit or other perishable articles which are unsound, or contain any filthy, decomposed or putrid substance, or that may be poisonous or deleterious to health or otherwise unsafe, the same being hereby declared to be a nuisance, the agent shall forthwith condemn or destroy the same, or in any other manner render the same unsalable as human food. (1939, c. 320, s. 6; 1973, c. 108, s. 53.)

Editor's Note. — The 1973 amendment substituted "a judge of the district" for "the judge of any recorder's, county" in the first sentence of subsection (b).

§ 106-126. Prosecutions of violations. — It shall be the duty of any district attorney of the superior court to whom the Commissioner of Agriculture reports any violation of this Article, to cause appropriate proceedings to be instituted in the proper courts without delay and to be prosecuted in the manner required by law. Before any violation of this Article is reported to any such district attorney for the institution of a criminal proceeding, the person against whom such proceeding is contemplated shall be given appropriate notice and an opportunity to present his views before the Commissioner of Agriculture or his designated agent, either orally or in writing, in person or by attorney, with regard to such contemplated proceeding. (1939, c. 320, s. 7; 1973, c. 47, s. 2; c. 108, s. 54.)

Editor's Note. — The first 1973 amendment substituted "district attorney" for "solicitor" in the first and second sentences.

The second 1973 amendment substituted "the superior court" for "a recorder's, county, or superior court" in the first sentence.

§ 106-127. Report of minor violations in discretion of Commissioner. — Nothing in this Article shall be construed as requiring the Commissioner of Agriculture to report for the institution of proceedings under this Article, minor violations of this Article, whenever the Commissioner believes that the public interest will be adequately served in the circumstances by a suitable written notice or warning. (1939, c. 320, s. 8.)

§ 106-128. Establishment of reasonable standards of quality by Board of Agriculture. — Whenever in the judgment of the Board of Agriculture such action will promote honesty and fair dealing in the interest of consumers, the Board shall promulgate regulations fixing and establishing for any food or class of food a reasonable definition and standard of identity, and/or reasonable standard of quality and/or fill of container. In prescribing a definition and standard of identity for any food or class of food in which optional ingredients are permitted, the Board shall, for the purpose of promoting honesty and fair dealing in the interest of consumers, designate the optional ingredients which shall be named on the label. The definitions and standards so promulgated shall conform so far as practicable to the definitions and standards promulgated by the Secretary of the United States Department of Agriculture under authority conferred by section 401 of the federal act. (1939, c. 320, s. 9.)

§ 106-129. Foods deemed to be adulterated. — A food shall be deemed to be adulterated:

(1) a. If it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance such food shall not be considered adulterated under this paragraph if the quantity of such substance in such food does not ordinarily render it injurious to health; or

b. If it bears or contains any added poisonous or added deleterious substance which is unsafe within the meaning of G.S. 106-132; or

c. If it consists in whole or in part of a diseased, contaminated, filthy, putrid or decomposed substance, or if it is otherwise unfit for food; or

d. If it has been produced, prepared, packed or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered diseased, unwholesome or injurious to health; or

e. If it is the product of a diseased animal or an animal which has died otherwise than by slaughter, or that has been fed upon the uncooked offal from a slaughterhouse; or

f. If its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health.

(2) a. If any valuable constituent has been in whole or in part omitted or abstracted therefrom; or

b. If any substance has been substituted wholly or in part therefor; or

c. If damage or inferiority has been concealed in any manner; or

d. If any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength or make it appear better or of greater value than it is.

(3) If it is confectionery and it bears or contains any alcohol or nonnutritive article or substance except harmless coloring, harmless flavoring, harmless resinous glaze not in excess of four tenths of one per centum (0.4%), harmless natural gum, and pectin: Provided, that this subdivision shall not apply to any confectionery by reason of its containing less than one half of one per centum (0.5%) by volume of alcohol derived solely from the use of flavoring extracts, or to any chewing gum by reason of its containing harmless nonnutritive masticatory substances.

(4) If it bears or contains a coal-tar color other than one from a batch which has been certified by the United States Department of Agriculture. (1939, c. 320, s. 10.)

Editor's Note. — For note on control of pesticides, see 49 N.C.L. Rev. 529 (1971).

§ 106-130. Foods deemed misbranded. — A food shall be deemed to be misbranded:

(1) If its labeling is false or misleading in any particular.

(2) If it is offered for sale under the name of another food.

(3) If it is an imitation of another food, unless its label bears, in type of uniform size and prominence, the word "imitation" and, immediately thereafter, the name of the food imitated.

(4) If its container is so made, formed or filled as to be misleading.

(5) If in package form, unless it bears a label containing

a. The name and place of business of the manufacturer, packer, or distributor; and

b. An accurate statement of the quantity of the contents in terms of weight, measure, or numerical count:

Provided, that under paragraph b of this subdivision reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations prescribed by the Board of Agriculture.

(6) If any word, statement, or other information required by or under authority of this Article to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(7) If it purports to be or is represented as a food for which a definition and standard of identity has been prescribed by regulations as provided by G.S. 106-128, unless

a. It conforms to such definition and standard, and

b. Its label bears the name of the food specified in the definition and standard, and, insofar as may be required by such regulations, the common names of optional ingredients (other than spices, flavoring, and coloring) present in such food.

(8) If it purports to be or is represented as

a. A food for which a standard of quality has been prescribed by regulations as provided by G.S. 106-128 and its quality falls below such standard unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard; or

b. A food for which a standard or standards of fill of container have been prescribed by regulation as provided by G.S. 106-128, and it falls below the standard of fill of container applicable thereto, unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard.

(9) If it is not subject to the provisions of subdivision (7) of this section, unless its label bears

a. The common or usual name of the food, if any there be, and

b. In case it is fabricated from two or more ingredients, the common or usual name of each such ingredient; except that spices, flavorings, and colorings, other than those sold as such, may be designated as spices, flavorings, and colorings without naming each:

Provided, that, to the extent that compliance with the requirements of paragraph b of this subdivision is impracticable or results in deception or unfair competition, exemptions shall be established by regulations promulgated by the Board of Agriculture.

(10) If it purports to be or is represented for special dietary uses, unless its label bears such information concerning its vitamin, mineral, and other dietary properties as the Board of Agriculture determines to be, and by regulations prescribes as, necessary in order to fully inform purchasers as to its value for such uses.

(11) If it bears or contains any artificial flavoring, artificial coloring, or chemical preservative, unless it bears a label stating that fact: Provided, that to the extent that compliance with the requirements of this subdivision is impracticable, exemptions shall be established by regulations promulgated by the Board of Agriculture: Provided, further, that for the purpose of complying with the provisions of this Article, as it pertains to bottled soft drinks, either the bottle crown or the crown together with the blown-in-the-bottle or annealed-to-the-bottle statements, now in usual and common use in this

State, shall be deemed sufficient labeling and no paper label shall be necessary. (1939, c. 320, s. 11.)

§ 106-131. Permits governing manufacture of foods subject to contamination with microorganisms. — (a) Whenever the Commissioner of Agriculture finds after investigation by himself or his duly authorized agents, that the distribution in North Carolina of any class of food may, by reason of contamination with microorganisms during manufacture, processing, or packing thereof in any locality in this State, be injurious to health, and that such injurious nature cannot be adequately determined after such articles have entered commerce, the Commissioner, then, and in such case only, shall promulgate regulations providing for the issuance, to manufacturers, processors, or packers of such class of food in such locality, of permits to which shall be attached such conditions governing the manufacture, processing, or packing of such class of food, for such temporary period of time, as may be necessary to protect the public health; and after the effective date of such regulations, and during such temporary period, no person shall introduce or deliver for introduction into commerce any such food manufactured, processed, or packed by any such manufacturer, processor, or packer unless such manufacturer, processor, or packer holds a permit issued by the Commissioner as provided by such regulations.

(b) The Commissioner of Agriculture is authorized to suspend immediately upon notice any permit issued under authority of this section if it is found that any of the conditions of the permit have been violated. The holder of a permit so suspended shall be privileged at any time to apply for the reinstatement of such permit, and the Commissioner shall immediately after prompt hearing and an inspection of the establishment, reinstate such permit if it is found that adequate measures have been taken to comply with and maintain the conditions of the permit, as originally issued, or as amended.

(c) Any officer or employee duly designated by the Commissioner of Agriculture shall have access to any factory or establishment, the operator of which holds a permit from the Commissioner of Agriculture for the purpose of ascertaining whether or not the conditions of the permit are being complied with, and denial of access for such inspection shall be ground for suspension of the permit until such access is freely given by the operator. (1939, c. 320, s. 12.)

§ 106-132. Regulations by Board of Agriculture as to use of deleterious substances. — Any poisonous or deleterious substance added to any food, except where such substance is required in the production thereof or cannot be avoided by good manufacturing practice, shall be deemed to be unsafe for purposes of the application of paragraph b of subdivision (1) of G.S. 106-129; but when such substance is so required or cannot be so avoided, the Board of Agriculture shall promulgate regulations limiting the quantity therein or thereon to such extent as the Board finds necessary for the protection of public health, and any quantity exceeding the limits so fixed shall also be deemed to be unsafe for the purposes of the application of paragraph b of subdivision (1) of G.S. 106-129. While such a regulation is in effect limiting the quantity of any such substance in the case of any food, such food shall not, by reason of bearing or containing any added amount of such substance, be considered to be adulterated within the meaning of paragraph a, subdivision (1), G.S. 106-129. In determining the quantity of such added substance to be tolerated in or on different articles of food, the Board shall take into account the extent to which the use of such substance is required or cannot be avoided in the production of each such article, and the other ways in which the consumer may be affected by the same or other poisonous or deleterious substances. (1939, c. 320, s. 13.)

§ 106-133. Drugs deemed to be adulterated. — A drug or device shall be deemed to be adulterated:

(1) a. If it consists in whole or in part of any filthy, putrid or decomposed substance; or

b. If it has been produced, prepared, packed, or held under insanitary conditions whereby it may have been contaminated with filth, or whereby it may have been rendered injurious to health; or

c. If it is a drug and its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health; or

d. If it is a drug and it bears or contains, for purposes of coloring only, a coal-tar color other than one from a batch certified by the United States Department of Agriculture.

(2) If it purports to be or is represented as a drug the name of which is recognized in an official compendium, and its strength differs from, or its quality or purity falls below, the standard set forth in such compendium. Such determination as to strength, quality, or purity shall be made in accordance with the tests or methods of assay set forth in such compendium, or in the absence of or inadequacy of such tests or methods of assay, those so prescribed by the United States Department of Agriculture. No drug defined in an official compendium shall be deemed to be adulterated under this subdivision because it differs from the standard of strength, quality, or purity therefor set forth in such compendium, if its difference in strength, quality, or purity from such standard is plainly stated on its label. Whenever a drug is recognized in both the United States Pharmacopoeia and the Homeopathic Pharmacopoeia of the United States it shall be subject to the requirements of the United States Pharmacopoeia unless it is labeled and offered for sale as a homeopathic drug, in which case it shall be subject to the provisions of the Homeopathic Pharmacopoeia of the United States and not to those of the United States Pharmacopoeia.

(3) If it is not subject to the provisions of subdivision (2) of this section and its strength differs from, or its purity or quality falls below, that which it purports or is represented to possess.

(4) If it is a drug and any substance has been

a. Mixed or packed therewith so as to reduce its quality or strength; or

b. Substituted wholly or in part therefor. (1939, c. 320, s. 14.)

§ 106-134. Drugs deemed misbranded. — A drug or device shall be deemed to be misbranded:

(1) If its labeling is false or misleading in any particular.

(2) If in package form unless it bears a label containing

a. The name and place of business of the manufacturer, packer, or distributor; and

b. An accurate statement of the quantity of the contents in terms of weight, measure, or numerical count: Provided, that under paragraph b of this subdivision reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations prescribed by the Board of Agriculture.

(3) If any word, statement, or other information required by or under authority of this Article to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(4) If it is for use by man and contains any quantity of the narcotic or hypnotic substance alphaeucaine, barbituric acid, betaeucaine, bromal, cannabis, carbromal, chloral, coca, cocaine, codeine, heroin, marijuana,

morphine, opium, paraldehyde, peyote, or sulphonmethane; or any chemical derivative of such substances, which derivative has been by the Board after investigation, found to be, and by regulations under this Article, designated as, habit forming; unless its label bears the name and quantity or proportion of such substance or derivative and in juxtaposition therewith the statement "Warning — May be habit forming."

(5) If it is a drug and is not designated solely by a name recognized in an official compendium unless its label bears
   a. The common or usual name of the drug, if such there be; and
   b. In case it is fabricated from two or more ingredients, the common or usual name of each active ingredient, including the kind and quantity or proportion of any alcohol, and also including, whether active or not, the name and quantity or proportion of any bromides, ether, chloroform, acetanilid, acetphenetidin, amidopyrine, antipyrine, atropine, hyoscine, hyoscyamine, arsenic, digitalis, digitalis glucosides, mercury, ouabain, strophanthin, strychnine, thyroid, or any derivative or preparation of any such substances, contained therein: Provided, that to the extent that compliance with the requirements of paragraph b of this subdivision is impracticable, exemptions shall be established by regulations promulgated by the Board of Agriculture.

(6) Unless its labeling bears
   a. Adequate directions for use; and
   b. Such adequate warnings against use in those pathological conditions or by children where its use may be dangerous to health, or against unsafe dosage or methods or duration of administration or application, in such manner and form, as are necessary for the protection of users: Provided, that where any requirement of paragraph a of this subdivision, as applied to any drug or device, is not necessary for the protection of the public health, the Board of Agriculture shall promulgate regulations exempting such drug or device from such requirements.

(7) If it purports to be a drug the name of which is recognized in an official compendium, unless it is packaged and labeled as prescribed therein: Provided, that the method of packing may be modified with the consent of the Board of Agriculture. Whenever a drug is recognized in both the United States Pharmacopoeia and the Homeopathic Pharmacopoeia of the United States, it shall be subject to the requirements of the United States Pharmacopoeia with respect to packaging and labeling unless it is labeled and offered for sale as a homeopathic drug, in which case it shall be subject to the provisions of the Homeopathic Pharmacopoeia of the United States and not to those of the United States Pharmacopoeia.

(8) If it has been found by the Department of Agriculture to be a drug liable to deterioration, unless it is packaged in such form and manner, and its label bears a statement of such precautions, as the Board of Agriculture shall by regulations require as necessary for the protection of public health. No such regulation shall be established for any drug recognized in an official compendium until the Commissioner of Agriculture shall have informed the appropriate body charged with the revision of such compendium of the need for such packaging or labeling requirements and such body shall have failed within a reasonable time to prescribe such requirements.

(9) a. If it is a drug and its container is so made, formed, or filled as to be misleading; or

b. If it is an imitation of another drug; or

c. If it is offered for sale under the name of another drug.

(10) If it is dangerous to health when used in the dosage, or with the frequency or duration prescribed, recommended, or suggested in the labeling thereof.

(11) If

a. It is a drug sold at retail and contains any quantity of amidopyrine, barbituric acid, cinchophen, dinitrophenol, sulfanilamide, pituitary, thyroid, or their derivatives, or

b. It is a drug or device sold at retail and its label bears a statement that it is to be dispensed or sold only by or on the prescription of a physician, dentist or veterinarian; unless it is sold on a written prescription signed by a member of the medical, dental, or veterinary profession who is licensed by law to administer such drug or device, and its label bears the name and place of business of the seller, the serial number and date of such prescription, and the name of such member of the medical, dental or veterinary profession. Such prescription shall not be refilled except on the specific authorization of the prescribing physician, dentist or veterinarian.

Nothing in this subdivision shall apply to a compound, mixture, or preparation containing salts or derivatives of barbituric acid which is sold in good faith for the purpose for which it is intended and not for the purpose of evading the provisions of this subdivision if:

a. Such compound, mixture, or preparation contains a sufficient quantity of another drug or drugs, in addition to such salts or derivatives, to cause it to produce an action other than its hypnotic or somnifacient action; or

b. Such compound, mixture, or preparation is intended for use as a spray or gargle or for external application and contains, in addition to such salts or derivatives, some other drug or drugs rendering it unfit for internal administration.

(12) A drug sold on a written prescription signed by a member of the medical, dental or veterinary profession (except a drug sold in the course of the conduct of a business of selling drugs pursuant to a diagnosis by mail) shall be exempt from the requirements of this section if —

a. Such member of the medical, dental or veterinary profession is licensed by law to administer such drug, and

b. Such drug bears a label containing the name and place of business of the seller, the serial number and date of such prescription, and the name of such member of the medical, dental or veterinary profession, and, unless otherwise directed by the prescriber of such drugs, the name and strength. (1939, c. 320, s. 15; 1949, c. 370; 1973, c. 831, s. 1.)

Editor's Note. — The 1973 amendment added to subdivision (12)b "and, unless otherwise directed by the prescriber of such drugs, the name and strength."

Session Laws 1973, c. 831, s. 2, provides: "Enforcement of the provisions of this act shall be the responsibility of the North Carolina Board of Pharmacy and violation of such provisions shall constitute grounds for disciplinary action by such Board."

§ 106-135. Regulations for sale of new drugs. — (a) No person shall sell, deliver, offer for sale, hold for sale or give away any new drug unless

(1) An application with respect thereto has become effective under section 505 of the federal act, or

(2) When not subject to the federal act unless such drug has been tested and has not been found to be unsafe for use under the conditions prescribed, recommended or suggested in the labeling thereof, and prior to selling or offering for sale such drug, there has been filed with the Commissioner of Agriculture an application setting forth

a. Full reports of investigations which have been made to show whether or not such drug is safe for use;

b. A full list of the articles used as components of such drug;

c. A full statement of the composition of such drug;

d. A full description of the methods used in, and the facilities and controls used for, the manufacture, processing, and packing of such drug;

e. Such samples of such drug and of the articles used as components thereof as the Commissioner may require; and

f. Specimens of the labeling proposed to be used for such drug.

(b) An application provided for in subsection (a)(2) of this section shall become effective on the sixtieth day after the filing thereof, except that if the Commissioner of Agriculture finds after due notice to the applicant and giving him an opportunity for a hearing, that the drug is not safe for use under the conditions prescribed, recommended or suggested in the proposed labeling thereof, he shall, prior to the effective date of the application, issue an order refusing to permit the application to become effective.

(c) This section shall not apply —

(1) To a drug intended solely for investigational use by experts qualified by scientific training and experience to investigate the safety of drugs provided the drug is plainly labeled "For investigational use only"; or

(2) To a drug sold in this State at any time prior to the enactment of this Article or introduced into interstate commerce at any time prior to the enactment of the federal act; or

(3) To any drug which is licensed under the Virus, Serum, and Toxin Act of July 1, 1902 (U.S.C., 1934 ed., Title 42, Chapter 4).

(d) A drug dispensed on a written prescription signed by a physician, dentist, or veterinarian (except a drug dispensed in the course of the conduct of a business of dispensing drugs pursuant to diagnosis by mail), shall be exempt from the requirements of this section if

(1) Such physician, dentist, or veterinarian is licensed by law to administer such drug, and

(2) Such drug bears a label containing the name and place of business of the dispenser, the serial number and date of such prescription, and the name of such physician, dentist, or veterinarian.

(e) An order refusing to permit an application under this section to become effective may be revoked by the Commissioner of Agriculture. (1939, c. 320, s. 16.)

Editor's Note.—For the Federal Food, Drug and Cosmetic Act, see 21 U.S.C. § 301 et seq.

§ 106-136. Cosmetics deemed adulterated. — A cosmetic shall be deemed to be adulterated:

(1) If it bears or contains any poisonous or deleterious substance which may render it injurious to users under the conditions of use prescribed in the labeling or advertisement thereof, or under such conditions of use as are customary or usual: Provided, that this provision shall not apply to coal-tar hair dye, the label of which bears the following legend

conspicuously displayed thereon: "Caution — This product contains ingredients which may cause skin irritation on certain individuals and a preliminary test according to accompanying directions should first be made. This product must not be used for dyeing the eyelashes or eyebrows; to do so may cause blindness," and the labeling of which bears adequate directions for such preliminary testing. For the purposes of this subdivision and subdivision (5) the term "hair dye" shall not include eyelash dyes or eyebrow dyes.

(2) If it consists in whole or in part of any filthy, putrid, or decomposed substance.

(3) If it has been produced, prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health.

(4) If its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health.

(5) If it is not a hair dye and it bears or contains a coal-tar color other than one from a batch which has been certified by the United States Department of Agriculture. (1939, c. 320, s. 17.)

Cited in Hanrahan v. Walgreen Co., 243 N.C. 268, 90 S.E.2d 392 (1955).

§ 106-137. Cosmetics deemed misbranded. — A cosmetic shall be deemed to be misbranded:

(1) If its labeling is false or misleading in any particular.

(2) If in package form unless it bears a label containing

a. The name and place of business of the manufacturer, packer, or distributor; and

b. An accurate statement of the quantity, of the contents in terms of weight, measure, or numerical count: Provided, that under paragraph b of this subdivision reasonable variations shall be permitted, and exemptions as to small packages shall be established by regulations prescribed by the Board of Agriculture.

(3) If any word, statement, or other information required by or under authority of this Article to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(4) If its container is so made, formed, or filled as to be misleading. (1939, c. 320, s. 18.)

Cited in Hanrahan v. Walgreen Co., 243 N.C. 268, 90 S.E.2d 392 (1955).

§ 106-138. False advertising. — (a) An advertisement of a food, drug, device or cosmetic shall be deemed to be false if it is false or misleading in any particular.

(b) For the purpose of this Article the advertisement of a drug or device representing it to have any effect in albuminuria, appendicitis, arteriosclerosis, blood poison, bone disease, Bright's disease, cancer, carbuncles, cholecystitis, diabetes, diphtheria, dropsy, erysipelas, gallstones, heart and vascular diseases, high blood pressure, mastoiditis, measles, meningitis, mumps, nephritis, otitis, media, paralysis, pneumonia, poliomyelitis, (infantile paralysis), prostate gland

disorders, pyelitis, scarlet fever, sexual impotence, sinus infection, smallpox, tuberculosis, tumors, typhoid, uremia, or venereal diseases, shall also be deemed to be false; except that no advertisement not in violation of subsection (a) shall be deemed to be false under this subsection if it is disseminated only to members of the medical, dental, pharmaceutical, or veterinary professions, or appears only in the scientific periodicals of these professions, or is disseminated only for the purpose of public health education by persons not commercially interested, directly or indirectly, in the sale of such drugs or devices: Provided, that whenever the Department of Agriculture determines that an advance in medical science has made any type of self-medication safe as to any of the diseases named above, the Board shall by regulation authorize the advertisement of drugs having curative or therapeutic effect for such disease, subject to such conditions and restrictions as the Board may deem necessary in the interest of public health: Provided, that this subsection shall not be construed as indicating that self-medication for diseases other than those named herein is safe or efficacious. (1939, c. 320, s. 19.)

Cited in Hanrahan v. Walgreen Co., 243 N.C. 268, 90 S.E.2d 392 (1955).

§ 106-139. Regulations by Board of Agriculture. — (a) The authority to promulgate regulations for the efficient enforcement of this Article is hereby vested in the Board of Agriculture, except that the Commissioner of Agriculture is hereby authorized to promulgate regulations under G.S. 106-131. The Board is hereby authorized to make the regulations promulgated under this Article conform insofar as practicable with those promulgated under the federal act.

(b) Hearings authorized or required by this Article shall be conducted by the Commissioner of Agriculture or such officer, agent, or employee as the Commissioner may designate for the purpose.

(c) A representative duly designated by the North Carolina Board of Pharmacy, and a representative duly designated by the North Carolina Commission for Health Services shall sit with the Commissioner of Agriculture, or his duly authorized agent, and assist in all hearings conducted in accordance with the provisions of G.S. 106-134, subdivisions (4), (6), (7), and (8); and in all cases of hearings and/or investigations, under G.S. 106-134, subdivisions (4), (6), (7), and (8) and under G.S. 106-135, subsections (a), (b), and (d), transcripts of all findings and recommendations shall be submitted to the Board of Pharmacy and the Commission for Health Services for approval.

(d) Before promulgating any regulation contemplated by G.S. 106-128; 106-130, subdivision (10); 106-131; 106-134, subdivisions (4), (6), (7), and (8), or 106-138, subsection (b), the Commissioner of Agriculture shall give appropriate notice of the proposal and of the time and place for a hearing. The regulation so promulgated shall become effective on a date fixed by the Board of Agriculture (which date shall not be prior to 90 days after its promulgation, except such regulations as may be promulgated under G.S. 106-131, which regulations shall become effective on the date of promulgation). Such regulation may be amended or repealed in the same manner as is provided for its adoption; except that in the case of a regulation amending or repealing any such regulation the Board, to such an extent as it deems necessary in order to prevent undue hardship, may disregard the foregoing provisions regarding notice, hearing, or effective date.

(e) All proposed definitions and standards for drugs shall, prior to promulgation by the Board of Agriculture be submitted to the Board of Pharmacy and the Commission for Health Services for approval. (1939, c. 320, s. 20; 1973, c. 476, s. 128.)

Editor's Note. — The 1973 amendment substituted "Commission for Health Services" for "Board of Health" in two places in subsection (c) and in subsection (e).

§ 106-140. Further powers of Commissioner of Agriculture for enforcement of Article. — The Commissioner of Agriculture or his duly authorized agent shall have free access at all reasonable hours to any factory, warehouse, or establishment in which foods, drugs, devices or cosmetics are manufactured, processed, packed, or held for introduction into commerce, or are held after such introduction, or to enter any vehicle being used to transport or hold such foods, drugs, devices or cosmetics in commerce, for the purpose:

(1) Of inspecting such factory, warehouse, establishment, or vehicle and all pertinent equipment, finished and unfinished materials, containers, and labeling therein, to determine if any of the provisions of this Article are being violated, and

(2) To secure samples or specimens of any food, drug, device or cosmetic after paying or offering to pay for such sample. It shall be the duty of the Commissioner of Agriculture to make or cause to be made examination of samples secured under the provisions of this section to determine whether or not any provision of this Article is being violated. (1939, c. 320, s. 21.)

§ 106-141. Appointment of inspectors. — (a) In the appointment of any drug inspector in carrying out the provisions of this Article, the Commissioner of Agriculture shall confer with the North Carolina Board of Pharmacy.

(b) The Commissioner of Agriculture is authorized to conduct the examinations and investigations for the purposes of this Article through officers and employees of the Department or through any health, food or drug officer or employee of the State, or any political subdivision thereof: Provided, that when examinations and investigations are to be conducted through any officer or employee of any agency other than the Department of Agriculture the arrangements for such examinations and investigations shall be approved by the directing head of such agency. (1939, c. 320, s. 22.)

§ 106-142. Publication of reports of judgments, decrees, etc. — (a) The Commissioner of Agriculture may cause to be published from time to time reports summarizing all judgments, decrees, and court orders which have been rendered under this Article, including the nature of the charge and the disposition thereof.

(b) The Commissioner of Agriculture may also cause to be disseminated such information regarding food, drugs, devices, and cosmetics as he deems necessary in the interest of public health and the protection of the consumer against fraud. Nothing in this section shall be construed to prohibit the Commissioner of Agriculture from collecting, reporting, and illustrating the results of the investigations of the Department. (1939, c. 320, s. 23.)

§ 106-143. Article construed supplementary. — Nothing in this Article shall be construed as in any way amending, abridging, or otherwise affecting the validity of any law or ordinance relating to the Commission for Health Services or the Department of Human Resources or any local health department in their sanitary work in connection with public and private water supplies, sewerage, meat, milk, milk products, shellfish, finfish, or other foods, or food products, for [or] the production, handling, or processing thereof; but this Article shall be construed to be in addition thereto. (1939, c. 320, s. 24½; 1973, c. 476, s. 128.)

Editor's Note. — The 1973 amendment substituted "Commission for Health Services or the Department of Human Resources" for "State Board of Health."

§ 106-144. Exemptions. — Meats and meat products subject to Federal Meat and Inspection Act approved March 4, 1907, as amended, are exempted from the provisions of this Article so long as such meats and meat products remain in possession of the processor. (1939, c. 320, s. 24²/₃.)

§ 106-145. Effective date. — This Article shall be in full force and effect from and after January 1, 1940: Provided, that the provisions of G.S. 106-139 shall become effective on April 3, 1939, and thereafter the Commissioner of Agriculture is authorized hereby to conduct hearings, and the Board is authorized to promulgate regulations which shall become effective on and after the effective date of this Article as the Board shall direct. (1939, c. 320, s. 25.)

Article 13.

Canned Dog Foods.

§§ 106-146 to 106-158: Repealed by Session Laws 1973, c. 771, s. 19.

Cross References. — For present provisions covering the subject matter of the repealed sections, see §§ 106-284.30 through 106-284.46. As to the effect of the repeal upon existing rules and regulations of the Department of Agriculture and other State agencies, see note to § 106-284.30.

Article 14.

State Inspection of Slaughterhouses.

§ 106-159. Application for permit. — Any persons, firms or corporations engaged in the slaughter of meat-producing animals within the State of North Carolina, may make application to the Commissioner of Agriculture for a permit to transport, convey, and sell their products at any place within the limits of the State of North Carolina. (1925, c. 181, s. 1.)

§ 106-160. Investigation of sanitary conditions; issuance of permit. — It shall be the duty of the Commissioner of Agriculture, on receipt of such application described above, to cause to be made a thorough investigation of the sanitary conditions existing in such establishment, the efficiency of the inspection provided, and the manner in which the food products of such establishment are slaughtered and prepared. If such establishment is found to be operating in accordance with the regulations of the Commissioner of Agriculture as provided for in this Article, a numbered permit shall be issued to the persons, firms, or corporations making application for same. (1925, c. 181, s. 2.)

§ 106-161. Municipalities; inspection of meats. — Municipal corporations shall have power and authority under this Article to establish and maintain the inspection of meats and meat products, at establishments located within their corporate limits, and county commissioners shall have power and authority to establish and maintain inspection of meats and meat products at establishments not located in municipal corporations, but located within the boundaries of their county. (1925, c. 181, s. 3.)

Local Modification. — Rowan and city of Salisbury: 1953, c. 594, s. 1.

§ 106-162. Fees for inspection. — The officials of municipalities or counties in which such inspection is maintained shall have full power and authority to

fix and collect fees for inspection of any and all meat animals or meat products necessary to the maintenance of such inspection, but no further inspection charge shall be made within the State. (1925, c. 181, s. 4.)

§ 106-163. Inspection conducted by veterinarian. — No permit shall be issued to any establishment except where the meat inspection is conducted under the supervision of a graduate veterinarian approved by the State Veterinarian of North Carolina or the North Carolina Veterinary Medical Examining Board. (1925, c. 181, s. 5.)

§ 106-164. Number of permit to identify meats; revocation of permit. — To each establishment complying with the provisions of this Article, the numbered permit shall be the establishment's official State number, and such number may be used to identify all passed meats and meat products prepared in such establishment. Such permit may be revoked by the Commissioner of Agriculture at any time when the establishment issued such permit violates any of the regulations prescribed for efficient inspection and sanitation. (1925, c. 181, s. 6.)

§ 106-165. Carcasses marked when inspected. — All meat carcasses inspected and passed in accordance with this Article shall be branded with a rubber stamp bearing the number of the establishment and the words "N.C. Inspected and Passed." (1925, c. 181, s. 7.)

§ 106-166. Rules and regulations for inspection; power of Commissioner. — The Commissioner of Agriculture shall have full power and authority to make and adopt all necessary rules and regulations for the efficient inspection, preparation and handling of meats and meat products in such establishments, and for the disposal of all condemned meats, and such rules and regulations shall govern the inspection of all meats and meat products at establishments operating under this Article. (1925, c. 181, s. 8.)

§ 106-167. Failure of butchers to keep record misdemeanor. — If any butcher shall fail to keep a book of registration and register the earmark, brand, or flesh-mark of all cattle, sheep, swine, or goats, and the name of the parties purchased from, in said registration, and the date of said purchase, which registration shall be open to the inspection of all persons, he shall be guilty of a misdemeanor, and upon conviction shall pay a fine of fifty dollars ($50.00) for each offense: Provided, this shall apply only to the Counties of Bertie, Chowan, Craven, Edgecombe, Franklin, Gates, Halifax, Harnett, Johnston, Jones, Martin, Northampton, Orange, Pitt, Richmond, Rockingham, Warren, Wayne and Wilson, and Warsaw township in Duplin County. (1889, c. 318; 1891, cc. 38, 557; 1893, c. 116; 1895, c. 363; 1903, c. 82; 1905, c. 31; Rev., s. 3803; 1909, c. 865, s. 1; C. S., s. 5099.)

§ 106-168. Local: Sales of calves for veal. — It shall be unlawful for any person or persons, firm, or corporation to buy or sell, or engage in the business of buying and selling or shipping calves for veal under the age of six months, either dead or alive: Provided, that this section shall not apply to persons buying or selling heifer calves to be raised for milk cows, nor to bull calves for raising purposes or work stock.

Any person, firm, or corporation violating the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction shall pay a penalty of not less than fifteen dollars ($15.00) nor more than thirty dollars ($30.00), or be imprisoned for not less than 20 nor more than 30 days, or both, in the discretion of the court, for each and every offense.

This section shall apply to the following counties only: Alamance, Alexander, Ashe, Cherokee, Clay, Franklin, Gaston, Lee, McDowell, Madison, Mitchell, Robeson, Rutherford, Sampson, Wake and Wilson. (Ex. Sess. 1913, c. 80; 1915,

c. 2; 1917, c. 93; Pub. Loc. 1917, cc. 299, 470; 1921, c. 85; 1925, c. 11; Pub. Loc. 1927, c. 143.)

Local Modification. — Alamance: Pub. Loc. 1913, c. 616; Pub. Loc. 1917, c. 391; Alexander: Pub. Loc. 1917, c. 180; Alleghany: Pub. Loc. 1927, c. 473; Anson: Pub. Loc. 1927, c. 422; Avery: Pub. Loc. 1927, c. 143; Durham: 1915, c. 155; Graham, Haywood, Jackson, Macon and Swain: Pub. Loc. 1927, c. 472; Lincoln: Pub. Loc. 1919, c. 159; Watauga: Pub. Loc. 1927, c. 473; Wilkes: Pub. Loc. 1913, c. 731; Ex. Sess. 1921, c. 12.

ARTICLE 14A.

Licensing and Regulation of Rendering Plants and Rendering Operations.

§ 106-168.1. Definitions. — For the purposes of this Article, unless the context or subject matter otherwise clearly requires,

(1) "Collector" means any person, as defined in this section, who collects raw material for the purpose of selling the same to any renderer for further processing.
(2) "Person" means any individual, partnership, firm, association or corporation.
(3) "Raw material" means inedible whole or portion of animal or poultry carcasses.
(4) "Rendering operation" means the processing of inedible whole or portion of animal or poultry carcasses and includes collection of such raw material for the purpose of processing.
(5) "Rendering plant" means the building or buildings in which raw material is processed and the premises upon which said building or buildings used in connection with such processing are located. (1953, c. 732.)

§ 106-168.2. License required. — No person shall engage in rendering operations unless such person shall hold a valid license to do so issued as hereinafter provided. (1953, c. 732.)

§ 106-168.3. Exemptions. — Nothing in this Article shall apply to the premises or the rendering operations on the premises of any establishment operating under a numbered permit from the North Carolina Department of Agriculture as provided by the North Carolina Meat Inspection Act, or under United States government inspection. (1953, c. 732.)

§ 106-168.4. Application for license. — Application for license shall be made to the Commissioner of Agriculture, hereinafter called the "Commissioner," on forms provided by him. The application shall set forth the name and residence of the applicant, his present or proposed place of business, the particular method which he intends to employ or employs in the processing of raw material, and such other information as the Commissioner may require, except that the Commissioner shall not require the submission of blueprints, plans, or specifications of the existing plant or equipment of any person owning and operating a rendering plant in North Carolina on January 1, 1953. The applicant shall pay a fee of fifty dollars ($50.00) with each application, which said fee shall be the only charge made in connection with licensure. (1953, c. 732.)

§ 106-168.5. Duties of Commissioner upon receipt of application; inspection committee. — Upon receipt of the application, the Commissioner shall promptly cause the rendering plant and equipment, or the plans, specifications, and selected site, of the applicant to be inspected by an inspection committee hereinafter called the "committee," which shall be composed of three members: One member who shall be designated by the Commissioner of

Agriculture and who shall be an employee of the Department of Agriculture, one member who shall be designated by the Secretary of Human Resources and who shall be an employee of the Department of Human Resources, and one member who shall be designated by the director of the North Carolina Division of the Southeastern Renderers Association, and who shall be a person having practical knowledge of rendering operations. Each member may be designated and relieved from time to time at the discretion of the designating authority. No State employee designated as a member of the committee shall receive any additional compensation therefor and no compensation shall be paid by the State to any other member. (1953, c. 732; 1957, c. 1357, s. 13; 1973, c. 476, s. 128.)

Editor's Note. — The 1973 amendment substituted "Secretary of Human Resources" for "State Health Director" and "Department of Human Resources" for "State Board of Health."

§ 106-168.6. Inspection by committee; certificate of specific findings. — The committee upon notification by the Commissioner shall promptly inspect the plans, specifications, and selected site in the case of proposed rendering plants and shall inspect the buildings, grounds, and equipment of established rendering plants. If the committee finds that the plans, specifications, and selected site in the case of proposed plants, or the buildings, grounds, and equipment in the case of established plants, comply with the requirements of this Article and the rules and regulations promulgated by the Commissioner not inconsistent therewith, it shall certify its findings in writing and forward same to the Commissioner. If there is a failure in any respect to meet such requirements, the committee shall notify the applicant in writing of such deficiencies and the committee shall within a reasonable time to be determined by the Commissioner make a second inspection. If the specified defects are remedied, the committee shall thereupon certify its findings in writing to the Commissioner. Not more than two inspections shall be required of the committee under any one application. (1953, c. 732.)

§ 106-168.7. Issuance of license. — Upon receipt of the certificate of compliance from the committee, the Commissioner shall issue a license to the applicant to conduct rendering operations as specified in the application. A license shall be valid until revoked for cause as hereinafter provided. (1953, c. 732.)

§ 106-168.8. Minimum standards for conducting rendering operations. — The following minimum standards shall be required for all rendering operations subject to the provisions of this Article:

(1) Buildings utilized in connection with the rendering plant shall be of sufficient size and shape to accommodate all phases of actual or intended processing. Adequate partitions shall be installed therein so as to eliminate any contact between raw materials and finished products and so as to preclude contamination of finished products. The buildings shall be constructed in a manner and of materials which will insure adequate drainage and sanitation in all phases of operation.

(2) Raw material upon arrival at the rendering plant shall be unloaded into a building for processing. All raw material shall be processed by approved methods within 24 hours after delivery to the rendering plant.

(3) Processing equipment shall be airtight, except for proper escapes for vapors caused by the cooking process.

(4) Cooking vapors shall be controlled and disposed of by approved methods.

(5) Vehicles used to transport raw material shall be so constructed as to prevent any drippings or seepings from such material from escaping from the truck. Such vehicles shall have body sides of sufficient height

that no portion of any raw material transported therein shall be visible. All vehicles shall be provided with suitable top or covering to prevent the spread of disease by flies or other agents during the transportation of raw material.

(6) All vehicles and containers used in transporting raw material shall be disinfected at the earliest practicable time after unloading, and shall, in any event, be disinfected before again being taken upon a public highway or before leaving the rendering plant. Approved facilities and materials for disinfection shall be carried on vehicles transporting carcasses. Employees shall be required to wear rubber boots which shall be disinfected prior to entry to a farm.

(7) Approved facilities, means and methods for disinfection shall be available at the rendering plant at all times. Employees and employees' clothing coming in contact with raw material shall be disinfected before coming in contact with any finished products, or any portion of the plant in which the same are located. Rodent and fly control measures shall be practiced as a further means of prevention of the spread of disease. (1953, c. 732.)

§ 106-168.9. Transportation by licensee. — Any person holding a license under the provisions of this Article, or acting as a collector as herein defined, may haul and transport raw material, except such material as may be specifically prohibited by law or by the rules and regulations promulgated by the Commissioner, when such transporting and hauling is done in accordance with the provisions of this Article. (1953, c. 732.)

§ 106-168.10. Disposal of diseased animals. — Any person holding a license under the provisions of this Article is authorized to kill diseased, sick, old or crippled animals on the premises of the owner upon his request; provided that no animal known to have tuberculosis, Bang's disease, anthrax, or any other disease for which quarantine may be imposed, shall be removed from any premises placed under quarantine without permission of the State Veterinarian, or his authorized agent. The licensee shall keep and make available to the Commissioner, upon request, such records as the Commissioner may require with respect to the collection and disposal of dead animals. (1953, c. 732.)

§ 106-168.11. Authority of agents of licensee. — Authority granted to any person holding a valid license under the provisions of this Article shall extend also to the agents and employees of such person while acting within the scope of their authority. All such agents and employees shall comply with the provisions of this Article and rules and regulations not inconsistent therewith, and shall display evidence of such employment or agency upon proper request at any time while so acting. (1953, c. 732.)

§ 106-168.12. Commissioner authorized to adopt rules and regulations. — The Commissioner of Agriculture is hereby authorized to make and establish reasonable rules and regulations, not inconsistent with the provisions of this Article, after consulting the committee, for the proper administration and enforcement thereof. (1953, c. 732.)

§ 106-168.13. Effect of failure to comply. — Failure to comply with the provisions of this Article or rules and regulations not inconsistent therewith shall be cause of revocation of license, if such failure shall not be remedied within a reasonable time after notice to the licensee. Any person whose license is revoked may reapply for a license in the manner provided in this Article for an initial application, except that the Commissioner shall not be required to cause the rendering plant and equipment of the applicant to be inspected by the

committee until the expiration of 30 days from the date of revocation. (1953, c. 732.)

§ 106-168.14. Collectors subject to certain provisions. — Any collector, as defined in this Article, shall be subject to the provisions of subdivision (5) and subdivision (6) of G.S. 106-168.8 and the provisions of G.S. 106-168.9, and any rules and regulations adopted by the Commissioner pursuant thereto. (1953, c. 732.)

§ 106-168.15. Violation a misdemeanor. — Any person conducting rendering operations or collecting raw material in violation of the provisions of this Article shall be guilty of a misdemeanor and shall, upon conviction, be punished in the discretion of the court. (1953, c. 732.)

ARTICLE 15.

Inspection of Meat and Meat Products by Counties and Cities.

§ 106-169. Inspection; meat stamped as approved or condemned. — All persons, firms, or corporations engaged in the business of operating a meat packing plant or plants within the State of North Carolina where more than 1,000 beef cattle are slaughtered per annum, or more than 10,000 hogs or swine are slaughtered per annum, or more than 500 sheep are slaughtered per annum shall have the meat or beef of said slaughtered cattle inspected by a veterinary surgeon duly licensed by the State of North Carolina; said inspector shall be elected by the governing body of the municipal corporation wherein said packing plant or plants is or are situated, or, if said packing plant be not situated within a municipal corporation, then by the board of county commissioners of the county wherein said packing plant is situated. Said inspector shall condemn all meats found to be unfit for human consumption. Said inspector shall cause all meats so condemned either to be destroyed or put to some use which shall not be dangerous for the public health. Each and every piece of meat or beef not condemned by said inspector shall be stamped by him in the usual manner; the stamp to be used to stamp said meat or beef shall bear the following words: "North Carolina State Meat Inspection — Approved (insert name of inspector), Inspector." All meat or beef condemned by said inspector shall be stamped by a similar stamp, except that the word "condemned" shall be inserted thereon instead of the word "approved." (Ex. Sess. 1924, c. 11, s. 1.)

Local Modification. — Rowan and city of Salisbury: 1953, c. 594, s. 2.

Cross Reference. — As to veterinarians, licensing, etc., generally, see § 90-179 et seq.

Editor's Note. — For a discussion of meat inspection, the right to destroy, due process of law, and damages for the destruction of meat which was really fit for human consumption, see 3 N.C.L. Rev. 27. The act is summarized in 3 N.C.L. Rev. 149.

§ 106-170. Fees for inspection. — The charges for said inspection shall be as follows: Twenty-five cents (25¢) for each and every beef cattle or cow inspected; ten cents (10¢) for each and every hog inspected, and ten cents (10¢) for each and every sheep inspected; ten cents (10¢) for each and every veal calf inspected; no further inspection shall be necessary within the State except such inspection as is provided for in G.S. 106-120 to 106-145. No further or other inspection charges for the inspection of meat or beef inspected as provided herein shall be made within the State. (Ex. Sess. 1924, c. 11, s. 2; 1925, c. 311.)

§ 106-171. Veterinary not available; who to inspect. — Should no regularly licensed veterinary surgeon be available for the purposes of this Article, then

the duties provided herein to be performed by said inspector shall be performed by some competent person to be elected by the governing body of the municipal corporation wherein said packing plant is located, or if said packing plant be not located within a municipal corporation, then by the board of county commissioners of the county wherein said packing plant is located. (Ex. Sess. 1924, c. 11, s. 3.)

§ 106-172. Collection of fees; remuneration of inspector. — The fees or inspection charges herein provided for shall be collected by the municipal corporation wherein said packing plant is located, or if said packing plant be not located within a municipal corporation, then by the board of county commissioners of the county wherein said plant is located; said fees or charges so collected shall be placed in the general fund of the municipal corporation or county collecting the same; the salary or remuneration of the inspector shall be fixed and paid by the municipal corporation or county by which said inspector is elected. (Ex. Sess. 1924, c. 11, s. 4.)

§ 106-173. Slaughterhouses, etc., under federal inspection, exempt from provisions of State inspection laws. — The provisions of G.S. 106-159 to 106-172 shall not be applicable to any slaughterhouse or meat packing plant, or any person, firm or corporation engaged in the business of the operation thereof, where such slaughterhouse or meat packing plant is operated under federal inspection pursuant to the provisions of the Meat Inspection Act of the United States, approved March 4, 1907, as amended. (1939, c. 329.)

Article 15A.

Meat Grading Law.

§ 106-173.1. Short title. — The short title of this Article shall be "The North Carolina Meat Grading Law." (1951, c. 1030, s. 1.)

§ 106-173.2. Definitions. — For the purpose of this Article, the following words, names and terms shall be construed respectively as follows:

(1) "Commissioner" means Commissioner of Agriculture of North Carolina.
(2) "Distributor" means any person, firm or corporation engaged in selling, handling or distributing meat.
(3) "Grader" means any person holding a grader's permit.
(4) "Grader's permit" means authority granted by the Commissioner to any person to grade meat in any plant or for any distributor holding a plant or distributor's permit.
(5) "Meat" means beef, lamb or pork.
(6) "Plant" means any person, firm or corporation engaged in slaughtering, packing or processing meat.
(7) "Plant or distributor's permit" means authority granted by the Commissioner to produce, handle, sell or distribute meat which is graded according to the provisions of this Article. (1951, c. 1030, s. 2.)

§ 106-173.3. Program inaugurated. — The Department of Agriculture shall inaugurate and conduct a program for the grading of meat which is slaughtered, processed or distributed in this State. (1951, c. 1030, s. 3.)

§ 106-173.4. Program shall be voluntary. — No plant or distributor is required to participate in this program, but any plant or distributor may participate so long as said plant or distributor meets the requirements for a permit as provided by this Article and continues to comply with those and other requirements which may be promulgated by the Board of Agriculture. (1951, c. 1030, s. 4.)

§ 106-173.5. Issuance of plant or distributor's permits. — (a) Any plant which produces satisfactory evidence to the Commissioner that it holds a grade-A health rating by the Commission for Health Services, both as to its plant proper and surrounding premises, and that it has the facilities to provide for both ante- and postmortem inspection of meat by a veterinarian or some other person acting under the supervision of a veterinarian, shall, upon application to the Commissioner, and the payment of a fee of one dollar ($1.00), be issued a plant or distributor's permit to grade meat as provided by this Article.

(b) Any distributor who produces satisfactory evidence to the Commissioner that the meat which is handled by him is slaughtered, processed or produced under conditions which would satisfy the requirements set out in subsection (a) of this section shall, upon the payment of one dollar ($1.00), be issued a plant or distributor's permit to grade meat as provided by this Article. (1951, c. 1030, s. 5; 1973, c. 476, s. 128.)

Editor's Note. — Under § 130-167, as amended by Session Laws 1973, c. 476, s. 128, the Commission for Health Services is authorized and directed to prepare rules and regulations governing the sanitation of places where meat and meat products are prepared, handled, stored or sold, and provide a system of scoring and grading such places. Therefore, "Commission for Health Services" has been substituted for "North Carolina Department of Public Health" in subsection (a) of this section, pursuant to Session Laws 1973, c. 476, s. 128.

§ 106-173.6. Revocation of plant or distributor's permit. — Any plant or distributor's permit may be revoked or suspended by the Commissioner if the holder of such permit fails to continue to comply with the requirements for obtaining such permit, or any other rules, regulations and standards of the Department of Agriculture or any law of this State relating to the handling of meat, but no permit shall be revoked without due notice to the holder thereof and an opportunity for the holder to be heard. (1951, c. 1030, s. 6.)

§ 106-173.7. Grader's permits. — A grader's permit, subject to the provisions of this Article shall be issued by the Commissioner when sufficient proof is presented to him to satisfy him that the person applying for such permit is of good moral character and has had sufficient training and experience to qualify him to grade meat, and when such applicant has paid to the Department of Agriculture the sum of one dollar ($1.00). (1951, c. 1030, s. 7.)

§ 106-173.8. Revocation of grader's permit. — Any grader's permit shall be revoked or suspended when it shall appear to the Commissioner that the holder of such permit has violated any rule, regulation or standard of the Department of Agriculture or any law of North Carolina relating to the handling of meat, but no permit shall be revoked without proper notice to the holder thereof and an opportunity for him to be heard. (1951, c. 1030, s. 8.)

§ 106-173.9. Supervision of program. — The Department of Agriculture, upon receiving a request from a plant holding a plant permit, shall inaugurate and supervise a grading program for said plant. (1951, c. 1030, s. 9.)

§ 106-173.10. Grades. — Each plant or distributor holding a plant or distributor's permit and participating in a meat-grading program authorized by this Article shall cause all graded meat handled by it to be classified in the following grades: "prime," "choice," "good," "commercial," "cutter," "utility" and "canner." These designations may be made only by a person holding a grader's permit and the standards of quality which are required to make up these grades shall be the same as those used by the federal meat grading agency to classify meats in these same grades. (1951, c. 1030, s. 10.)

§ 106-173.11. All meat to be stamped. — Each plant or distributor holding a plant or distributor's permit shall, after a grader has determined the grade of any piece of meat handled by said plant or distributor, cause to be stamped on that piece of meat the grade name, the letters "N.C.D.A." and a letter, number or symbol to be assigned by the Department of Agriculture in order to identify the plant or distributor handling that piece of meat. (1951, c. 1030, s. 11.)

§ 106-173.12. Roller stamps to be rented. — Each plant or distributor holding a plant or distributor's permit shall obtain from the North Carolina Department of Agriculture one or more sets of roller stamps and shall pay a rental fee not in excess of the amount required to procure and supply these stamps. These roller stamps shall remain the property of the Department of Agriculture and shall be returned to the Department of Agriculture upon the suspension or revocation of the plant or distributor's permit or upon the request of the Commissioner. (1951, c. 1030, s. 12.)

§ 106-173.13. Roller stamps, contents of. — These roller stamps shall contain the letters "N.C.D.A." and a number, letter or other symbol to identify the plant or distributor using said stamp. The stamps shall also contain the words "prime," "choice," "good," "commercial," "utility," "cutter" and "canner" respectively. (1951, c. 1030, s. 13.)

§ 106-173.14. Reports by plants or distributors. — Plants or distributors holding meat-grading permits shall make reports regarding the number of animals slaughtered, number of animals graded, the grades within which these animals were classified and the origin of these animals, and such other information as the Commissioner may deem proper. These reports shall be filed when requested by the Commissioner and on the forms to be supplied by him. (1951, c. 1030, s. 14.)

§ 106-173.15. Fees. — The Commissioner is authorized to establish a uniform system of fees to be charged by the Department of Agriculture and these fees shall be charged for services performed in the administration of this Article. (1951, c. 1030, s. 15.)

§ 106-173.16. Rules and regulations; violation of Article or regulations a misdemeanor. — The Board of Agriculture is authorized, after public hearing following due public notice, to promulgate such rules, regulations, definitions and standards as may be necessary to carry out the provisions of this Article. The violation of any of the provisions of this Article, or any of the rules and regulations promulgated hereunder, shall constitute a misdemeanor and shall be punished in the discretion of the court. (1951, c. 1030, s. 16.)

ARTICLE 16.

Bottling Plants for Soft Drinks.

§ 106-174. Specifications of places of manufacture and sale. — Every building or room used for the manufacture, bottling or preparation for sale of any soft drink shall be properly lighted and ventilated, and shall have floors of some material which can be flushed and washed clean with water. All manufacturing or bottling of soft drinks shall be conducted with due regard for the purity and wholesomeness of the product therein produced. (1935, c. 372, s. 1.)

§ 106-175. Soft drink defined. — The term "soft drink" as used herein shall include all soda waters, orangeade, root beers, and similar beverages,

carbonated or otherwise, or ingredients used in the preparation of same. (1935, c. 372, s. 2.)

§ 106-176. Establishment and equipment kept clean; containers sterilized. — The floors, walls, ceilings, furniture, receptacles, implements, and machinery of every establishment where soft drinks are manufactured, bottled, stored, sold, or distributed shall at all times be kept in a clean, sanitary condition; all vessels, receptacles, utensils, tables, shelves, and machinery used in moving, handling, mixing, or processing must be thoroughly cleaned daily. All returnable bottles and similar type returnable containers must be cleaned and sanitized in caustic soda or alkali solution in not less than three percent (3%) alkali or to an equivalent cleansing and sanitizing effect as prescribed by the rules and regulations adopted by the Board of Agriculture. Single service containers must be cleaned and sanitized according to rules and regulations adopted by the North Carolina Board of Agriculture. (1935, c. 372, s. 3; 1937, c. 232; 1969, c. 1068.)

§ 106-177. Protection from contamination. — Soft drinks in the process of manufacture, preparation, bottling, storing, or distribution must be protected from flies, other insects and filthy products, and, as far as may be necessary, from all other foreign or injurious contamination. (1935, c. 372, s. 4.)

§ 106-178. Refuse removed daily. — All refuse and other waste products subject to decomposition and decay incident to the manufacture, preparation, storing, selling, or distribution of soft drinks must be removed from the plant daily. (1935, c. 372, s. 5.)

§ 106-179. Syrup room screened. — The doors, windows and other openings of the syrup room used for the preparation of soft drinks by bottling establishments shall be fitted with wire screens of not coarser than 14-mesh wire gauze and the door or doors shall be fitted with self-closing screens. (1935, c. 372, s. 6.)

§ 106-180. Washroom and toilet. — Every bottling establishment shall be provided with washroom, and, if a toilet is attached, it must be of sanitary construction, and such toilet shall be separate and apart from any room used for the manufacture or bottling of soft drinks. (1935, c. 372, s. 7.)

§ 106-181. Use of deleterious substances prohibited. — The use of soap bark or any other substance deleterious to health in soft drinks is prohibited. (1935, c. 372, s. 8; 1955, c. 271, s. 1.)

§ 106-181.1. Labeling. — The bottle or container in which a soft drink is sold must bear the name of the product and the name and address of the manufacturer or jobber. (1935, c. 372, s. 8; 1955, c. 271, s. 2.)

§ 106-182. Enforcement by Commissioner of Agriculture; inspectors; obstruction a misdemeanor. — It shall be the duty of the Commissioner of Agriculture to enforce the provisions of this Article. The food inspectors or experts of the Department of Agriculture shall have authority, during business hours, to enter, for the purpose of inspection, all buildings or rooms used for the manufacture, bottling or handling of soft drinks, and to examine the condition of same, including products before and after manufacture, machinery and all implements used; and any person who shall hinder or prevent any inspector or expert of the Department in the performance of his duty in connection with this Article shall be guilty of a violation thereof. (1935, c. 372, s. 9.)

§ 106-183. Violation of Article a misdemeanor. — Any person who shall violate any of the provisions of this Article shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not to exceed twenty-five dollars

($25.00) for the first offense, and for each subsequent offense in the discretion of the court. (1935, c. 372, s. 10.)

§ 106-184. Bottler's inspection fee. — For the purpose of defraying expenses incurred in the enforcement of the provisions of this Article, the owner, proprietor, or operator of each bottling plant or place where soft drinks are made or bottled operated in this State shall pay to the Commissioner of Agriculture an inspection fee of ten dollars ($10.00) during the month of June of each year or before any such bottling plant shall be operated thereafter. (1935, c. 372, s. 11.)

§ 106-184.1. Department of Agriculture authority. — The Board of Agriculture shall have authority to make rules and regulations for the enforcement of this Article. The Board shall have authority to delegate the responsibility for determining the amount of any ingredients which may be used in the manufacture of soft drinks in order that soft drinks will comply with the North Carolina Food, Drug and Cosmetic Act and insofar as is practicable, federal law and regulations. No ingredient shall be used in the manufacture of soft drinks without the prior approval of the Board of Agriculture or such other person as is designated by the Board of Agriculture. The Board shall by regulation provide for appeals from the ruling of the Board or such other person designated by the Board. (1969, c. 49.)

Article 17.

Marketing and Branding Farm Products.

§ 106-185. Establishment of standard packages, etc., authorized. — The purpose of this Article is to give authority to investigate marketing conditions and to establish and maintain standard grades and packages and State brands for farm and horticultural crops and animal products. The term "farm products" as used hereafter in this Article shall be construed to mean any or all of the crops or products named above in this section. (1919, c. 325, s. 1; C. S., s. 4781; 1921, c. 140.)

§ 106-186. Power to employ agents and assistants. — The Board of Agriculture is charged with the execution of the provisions of this Article, and has authority to employ such agents and assistants as may be necessary, fix their compensation and define their duties, and may require bonds in such amount as they may deem advisable, conditioned upon the faithful performance of duties by any employee or agent. (1919, c. 325, s. 2; C. S., s. 4782.)

§ 106-187. Board of Agriculture to investigate marketing of farm products. — It shall be the duty of the Board of Agriculture to investigate the subject of marketing farm products, to diffuse useful information relating thereto, and to furnish advice and assistance to the public in order to promote efficient and economical methods of marketing farm products, and authority is hereby given to gather and diffuse timely information concerning the supply, demand, prevailing prices, and commercial movement of farm products, including quantities in common and cold storage, and may interchange such information with the United States Department of Agriculture. (1919, c. 325, s. 3; C. S., s. 4783.)

§ 106-188. Promulgation of standards for receptacles, etc. — After investigation, and from time to time as may be practical and advisable, the Board shall have authority to establish and promulgate standards of opened and closed receptacles for, and standards for the grade and other classification of farm products, by which their quantity, quality, and value may be determined, and

prescribe and promulgate rules and regulations governing the marks, brands, and labels which may be required for receptacles for farm products, for the purpose of showing the name and address of the producer or packer; the quantity, nature and quality of the product, or any of them, and for the purpose of preventing deception in reference thereto, and for the purpose of establishing a State brand for any farm product produced in North Carolina: Provided, that any standard for any farm product or receptacle therefor, or any requirement for marking receptacles for farm products, now or hereafter established under authority of the Congress of the United States, shall forthwith, as far as applicable, be established or prescribed and promulgated as the official standard or requirement in this State: Provided, that no standard established or requirement for marking prescribed under this Article shall become effective until the expiration of 30 days after it shall have been promulgated. (1919, c. 325, s. 4; C. S., s. 4784.)

§ 106-189. Sale and receptacles of standardized products must conform to requirements. — Whenever any standard for the grade or other classification of any farm product becomes effective under this Article no person thereafter shall pack for sale, offer to sell, or sell within this State any such farm product to which such standard is applicable, unless it conforms to the standard, subject to such reasonable variations therefrom as may be allowed in the rules and regulations made under this Article: Provided, that any farm product may be packed for sale, offered for sale, or sold, without conforming to the standard for grade or other classification applicable thereto, if it is especially described as not graded or plainly marked as "Not graded." This proviso shall not apply to peaches. (It is the intent and purpose of this exemption to exempt peaches from the requirements of Article 17 of Chapter 106 that ungraded peaches, when sold or offered for sale, shall be marked "ungraded," "field run," "not graded," "grade not determined" or "unclassified," or words of similar import.) The Board of Agriculture, or the Commissioner of Agriculture, and their authorized agents, are authorized to issue "stop-sale" orders which shall prohibit further sale of the products if they have reason to believe such products are being offered, or exposed, for sale in violation of any of the provisions of this Article until the law has been complied with or said violations otherwise legally disposed of.

Whenever any standard for an open or closed receptacle for a farm product shall be made effective under this Article no person shall pack for sale in and deliver in a receptacle, or sell in and deliver in a receptacle, any such farm product to which such standard is applicable, unless the receptacle conforms to the standard, subject to such variations therefrom as may be allowed in the rules and regulations made under this Article, or unless the receptacle be of a capacity twenty-five percent (25%) less than the capacity of the minimum standard receptacle for the product: Provided, that any receptacle for such farm product of a capacity within twenty-five percent (25%) of, or larger than, the minimum standard receptacle for the product may be used if it be specifically described as not a standard size, or be conspicuously marked with the phrase, "Not standard size," in addition to any other marking which may be prescribed for such receptacles under authority given by this Article.

Whenever any requirement for marking a receptacle for a farm product shall have been made effective under this Article no person shall sell and deliver in this State any such farm product in a receptacle to which such requirement is applicable unless the receptacle be marked according to such requirements. (1919, c. 325, s. 5; C. S., s. 4785; 1943, c. 483; 1969, c. 849.)

Editor's Note. — For comment on the 1943 amendment, see 21 N.C.L. Rev. 329.

§ 106-189.1. Apples marked as to grade; penalty. — (a) All apples sold, offered for sale or shipped into this State in closed containers shall bear on the container, bag or other receptacle no grade other than the applicable U.S. grade or standard or the marking "unclassified," "not graded" or "grade not determined."

(b) Any person, firm or corporation violating the provisions of this section shall be guilty of a misdemeanor and shall be punished by a fine of not more than fifty dollars ($50.00). Each day on which apples are sold or offered for sale in violation of the provisions of this section shall constitute a separate violation. (1971, c. 867, ss. 1, 2; 1973, c. 506.)

Editor's Note. — The 1973 amendment rewrote subsection (a).

§ 106-189.2. Sale of immature apples. — (a) All apples sold, offered for sale, or shipped into this State shall meet the requirements for maturity of the United States standards for grades of apples.

(b) Any person, firm or corporation violating the provisions of this section shall be guilty of a misdemeanor and shall be punished by a fine of not less than one hundred dollars ($100.00). Each day on which apples are sold or offered for sale in violation of the provisions of this section shall constitute a separate violation. (1973, c. 973.)

§ 106-190. Inspectors or graders authorized; revocation of license. — The Board is authorized to employ, license, or designate persons to inspect and classify farm products and to certify as to the grade or other classification thereof, in accordance with the standards made effective under this Article, and shall fix, assess and collect, or cause to be collected, fees for such services. Whenever, after opportunity for a hearing is afforded to any person employed, licensed, or designated under this section, it is determined that such person has failed to classify farm products correctly in accordance with the standards established therefor under this Article, or has violated any provision of this Article, or of the rules and regulations made hereunder, the Board may suspend or revoke the employment, license, or designation of such person. Pending investigation the person in charge of this work may suspend or revoke any such appointment, license, or designation temporarily without hearing. (1919, c. 325, s. 6; C. S., s. 4786.)

§ 106-191. Appeal from classification. — The owner or person in possession of any farm product classified in accordance with the provisions of this Article may appeal from such classification under such rules and regulations as may be prescribed. (1919, c. 325, s. 7; C. S., s. 4787.)

§ 106-192. Certificate of grade prima facie evidence. — A certificate of the grade or other classification of any farm product issued under this Article shall be accepted in any court of this State as prima facie evidence of the true grade or other classification of such farm product at the time of its classification. (1919, c. 325, s. 8; C. S., s. 4788.)

§ 106-193. Unwholesome products not classified; health officer notified. — Any person employed, licensed, or designated shall neither classify nor certify as to the grade or other classification of any farm product which, in his judgment, is unwholesome or unfit for food of man or other animal. If, in the performance of his official duties, he discovers any farm product which is unwholesome or unfit for food of man or for other animal for which it is intended, he shall promptly report the fact to a health officer of the State or of any county or municipality thereof. (1919, c. 325, s. 9; C. S., s. 4789.)

§ 106-194. Inspection and sampling of farm products authorized. — Agents and employees are authorized from time to time to ascertain the amount of any farm products in this State, to inspect the same in the possession of any person engaged in the business of marketing them in this State, and to take samples of such products. In carrying out these purposes agents and employees are authorized to enter on any business day, during the usual hours of business, any storehouse, warehouse, cold storage plant, packing house, stockyard, railroad yard, railroad car, or any other building or place where farm products are kept or stored by any person engaged in the business of marketing farm products. (1919, c. 325, ss. 10, 11; C. S., s. 4790.)

§ 106-195. Rules and regulations; how prescribed. — The Board of Agriculture is authorized to make and promulgate such rules and regulations as may be necessary to carry out the provisions of this Article. Such rules and regulations shall be made to conform as nearly as practicable to the rules and regulations of the Secretary of Agriculture of the United States, prescribed under any act of Congress of the United States relating to the marketing of farm products. (1919, c. 325, s. 12; C. S., s. 4791.)

§ 106-196. Violation of Article or regulations a misdemeanor. — Any person who violates any provision of this Article, or of the rules and regulations made under the Article for carrying out its provisions, or fails or refuses to comply with any requirement thereof, or who wilfully interferes with agents or employees in the execution, or on account of the execution, of his or their duties, shall be guilty of a misdemeanor. Any person convicted of a misdemeanor under this Article shall be punished by a fine of not more than one hundred dollars ($100.00), or by imprisonment in the county jail for not more than 30 days, or by both in the discretion of the court. (1919, c. 325, ss. 13, 14; C. S., s. 4792.)

ARTICLE 18.

Shipper's Name on Receptacles.

§ 106-197. Shipping fruit or vegetables not having grower's or shipper's name stamped on receptacle a misdemeanor. — Any person or persons, firm or corporation selling or offering for sale or consignment any barrel, crate, box, or other case, package or receptacle containing any berries, fruit, melons, potatoes, vegetables, truck or produce of any kind whatsoever, to be shipped to any point within or without the State, without the true name of the grower or packer either written, printed, stamped or otherwise placed thereon in distinct and legible characters, shall be guilty of a misdemeanor and fined not exceeding fifty dollars ($50.00) or imprisoned not exceeding 30 days. This section shall not apply to railroads, express companies and other transportation companies selling or offering for sale for transportation or storage charges or any other charges accruing to said railroads, express companies or other transportation companies any barrel, crate, box, or other case, package or receptacle containing berries, fruit, melons, potatoes, vegetables, truck or produce. (1915, c. 193; C. S., s. 5087.)

ARTICLE 19.

Trademark for Standardized Farm Products.

§ 106-198. Adoption, design and copyright of trademark, etc. — The Board of Agriculture shall adopt an official trademark, brand, or label, the design of which shall incorporate the words "Tar Heel" superimposed on an outline map of North Carolina, to identify North Carolina farm products of grade and quality

in keeping with standards to be set up by the Board governing its use. The Board of Agriculture shall cause this trademark to be copyrighted to prevent imitation and infringement. (1941, c. 155, s. 1.)

§ 106-199. Regulation of use of trademark. — The trademark may be used only in the manner prescribed by the Board of Agriculture and under the rules and regulations to be laid down by the Board for its protection and use, and only on products meeting the quality, condition, pack and grade standards prescribed by the Board consistent with G.S. 106-185 to 106-196. No person, firm or corporation shall use this trademark on any product until the official inspection service of the Department of Agriculture certifies that the product meets the requirements of quality, condition, pack and grade standard set up by the Board for the product. (1941, c. 155, s. 2.)

§ 106-200. License for use of trademark. — Growers, handlers, shippers or processors may procure a license to use the trademark on standardized products by applying to the Commissioner of Agriculture. The Commissioner may investigate the integrity and business methods of each applicant and may refuse licenses to applicants whose use might endanger the reputation of the trademark. The Commissioner may suspend, revoke or cancel the license of any user who violates the terms of his license or of any rule or regulation of the Board concerning its use. The Board of Agriculture may charge reasonable and uniform fees for the issuance of these licenses and for the use of the trademark by these licensees, and shall use these revenues to apply on the cost of administering this Article and to carry out a program of merchandising and advertising for standardized identified North Carolina farm products. (1941, c. 155, s. 3.)

§ 106-201. Licensing of providers of approved designs; furnishing list of growers, etc. — To facilitate the procurement of tags, labels, packages, bags or containers properly designed and constructed to display the official North Carolina State trademark, the following regulations shall be established:

(1) Manufacturers or distributors of tags, labels, packages, bags or containers shall apply to the Commissioner of Agriculture for a provider's license, and shall submit samples or designs of such tags, labels, packages, bags or containers for the Commissioner's approval as to their construction, adaptability and practicability for the use planned. The Commissioner shall license manufacturers or distributors of approved designs as approved providers of such articles, subject to rules, regulations and a reasonable license fee to be prescribed by the Board of Agriculture.

(2) No such license shall be issued until the provider agrees to furnish such trademarked supplies only to persons, partnerships or corporations within the State licensed to use the trademark. The approved provider shall immediately report to the Commissioner of Agriculture, on blanks provided for that purpose, each sale and shipment of such authorized supplies, the name of the purchaser, the quantity and type of supplies sold, and the point to which it was shipped or delivered. The Commissioner shall furnish approved providers with current lists of growers, shippers, handlers or processors licensed to use the North Carolina trademark.

(3) The Commissioner of Agriculture may suspend, revoke or cancel licenses of approved providers for violation of any of the terms of this license, in which case equitable arrangements will be made for disposal of manufactured goods in stock. (1941, c. 155, s. 4.)

§ 106-202. Violation made misdemeanor. — Any person, firm or corporation who knowingly violates any of the provisions of this Article or any of the rules

and regulations promulgated under it by the Board of Agriculture, shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than five hundred dollars ($500.00) or by imprisonment for not more than one year, or both, for each offense. (1941, c. 155, s. 5.)

ARTICLE 20.

Standard Weight of Flour and Meal.

§§ 106-203 to 106-209: Repealed by Session Laws 1945, c. 280, s. 2.

Cross Reference. — As to act establishing uniform weights and measures generally, see §§ 81-1 to 81-22.

ARTICLE 21.

Artificially Bleached Flour.

§ 106-210. Collection and analysis of samples; publication of results. — For the purpose of regulating the labeling and sale of artificially bleached flour, the Board of Agriculture shall cause inspection to be made from time to time, and samples of flour offered for sale in the State obtained, and shall cause same to be analyzed or examined by the State food chemist or other experts of the Department of Agriculture for the purpose of determining if same has been artificially bleached or sold in violation of this Article. The Board of Agriculture is hereby authorized to make such publication of the results of the examination, analysis and so forth as they may deem proper. (1917, c. 249, s. 1; C. S., s. 4801.)

§ 106-211. Entry to secure samples. — The food inspectors of the Department of Agriculture shall have authority, during business hours, to enter all stores, warehouses, and other places where food products are stored or offered for sale for the purpose of inspection and obtaining samples of same. (1915, c. 278, s. 2; C. S., s. 4802.)

§ 106-212. Commissioner to notify district attorney of violations and certify facts. — If it shall appear from such inspection or examination or both that any of the provisions of this Article have been violated, the Commissioner of Agriculture shall certify the facts to the district attorney in the district in which the violation was committed, and furnish that officer with the facts in the case, duly authenticated by the expert, under oath, who made the examination. (1915, c. 278, s. 3; C. S., s. 4803; 1973, c. 47, s. 2.)

Editor's Note. — The 1973 amendment substituted "district attorney" for "solicitor."

§ 106-213. Label for artificially bleached flour. — Flour artificially bleached with nitrogen peroxide or chlorine or any other agent, when offered for sale in North Carolina, shall have plainly marked or printed in a conspicuous place on the sack, barrel, or other package, in letters not smaller than five-eighths (⅝) of an inch in size, the legend: "Artificially Bleached." (1915, c. 278, s. 4; C. S., s. 4804.)

§ 106-214. Statement required to be filed before sale. — Before any artificially bleached flour shall be offered for sale in this State the manufacturer, dealer, agent, or person who causes it to be sold or offered for sale, by sample or otherwise, within this State shall file with the Commissioner of Agriculture

a statement that it is desired to offer such bleached flour for sale in North Carolina, and the name of the manufacturer or jobber and the brand name of the flour if it has such. (1915, c. 278, s. 5; C. S., s. 4805.)

§ 106-215. Inspection fee for registering brands. — For the purpose of defraying expenses incurred in the enforcing of the provisions of this Article, for each and every separate brand of artificially bleached flour registered and before being offered for sale in the State, the manufacturer, dealer, or agent registering same shall pay to the Commissioner of Agriculture an inspection fee of fifteen dollars ($15.00), and during the month of January in each year, or before such flour is offered for sale in the State, said fees to be used by the Board and Commissioner of Agriculture for executing the provisions of this Article. (1917, c. 249, s. 2; C. S., s. 4806.)

§ 106-216. Violation of Article a misdemeanor. — Any person or persons, firm or corporation, by himself or agent, who shall sell, offer for sale, or have in his possession with intent to sell any artificially bleached flour not labeled or branded as required in G.S. 106-213, or who shall violate any of the provisions of this Article, shall be guilty of a misdemeanor, and for such offense, upon conviction of same, shall be fined not to exceed fifty dollars ($50.00) for the first offense and for each subsequent offense not to exceed one hundred dollars ($100.00), or be imprisoned not to exceed six months, or both, in the discretion of the court. (1915, c. 278, s. 7; C. S., s. 4807.)

§ 106-217. Forfeiture for unauthorized sale; release from forfeiture. — The flour offered for sale in violation of this Article shall be subject to seizure, condemnation, and sale by the Commissioner of Agriculture, as is provided for the seizure, condemnation, and sale of commercial fertilizers; and the proceeds thereof, if sold, less the legal costs and charges, shall be paid into the treasury for use in executing the provisions of this Article: Provided, that the Commissioner of Agriculture may, in his discretion, for the first offense, order the release of the flour seized, upon payment by the owner of the flour of the expenses incurred by the Department in the seizure of the same, and upon compliance with the requirements of this Article, when it shall appear to the Commissioner that said owner did not intend to violate the law. (1915, c. 278, s. 7; C. S., s. 4808.)

§ 106-218. Seller to furnish samples on payment. — Every person who offers for sale or delivers flour to a purchaser shall, within business hours, and upon tender or payment of the selling price, furnish a sample of flour as demanded, to any person duly authorized by the Board of Agriculture to secure same, and who shall apply for such sample. (1915, c. 278, s. 8; C. S., s. 4809.)

§ 106-219. Refusing samples or obstructing Article a misdemeanor. — Any manufacturer or dealer who refuses to comply, upon demand, with the requirements of G.S. 106-218, or any person who shall wilfully impede, hinder, or otherwise prevent or attempt to prevent, any chemist or inspector in the performance of his duty in connection with this Article, shall be guilty of a misdemeanor, and upon conviction be fined not less than ten dollars ($10.00) and not more than one hundred dollars ($100.00), or imprisoned, in the discretion of the court. (1915, c. 278, s. 8; C. S., s. 4810.)

ARTICLE 21A.

Enrichment of Flour, Bread, Cornmeal and Grits.

§ 106-219.1. Title of Article. — This Article may be cited as "The North Carolina Flour, Bread, and Cornmeal Enrichment Act." (1945, c. 641, s. 1.)

Editor's Note. — For comment on act from which this Article was codified, see 23 N.C.L. Rev. 344.

§ 106-219.2. Definitions. — For the purpose of this Article:

(1) "Commissioner" means the Commissioner of Agriculture; "Board" means the Board of Agriculture.

(2) "Corn grits" means all types of corn grits intended for human consumption.

(3) "Cornmeal" means all types of cornmeal intended for human consumption.

(4) "Enriched" means restored or brought up to content of vitamins and minerals as described in this Article.

(5) "Flour" (white flour) means the fine-grained product obtained from the milling of wheat, with or without leavening, bleaching, or other agents for similar purposes. The adjective "whole wheat" means the variety with no part of the wheat berry removed; "white" means the bolted or refined type with parts of the wheat berry removed; but the term "flour" shall not include flours such as specialty cake, pancake and pastry flours which are not used for bread, roll, bun or biscuit making.

(6) "North Carolina Food, Drug and Cosmetic Act" refers to Article 12 of this Chapter.

(7) "Person" includes individual, partnership, corporation, and association.

(8) "White bread" means bread made of "white flour," also rolls and biscuits of the bread-dough type; but shall not include the extensively sweetened, iced or cake type of product. (1945, c. 641, s. 2; 1955, c. 630, s. 1.)

§ 106-219.3. Required vitamins and minerals. — On and after June 30, 1945, it shall be unlawful for any person to manufacture, mix, compound, sell or offer for sale in this State any products covered herein which do not contain the vitamins and minerals as prescribed in the following formulae:

(1) White flour shall contain in each pound not less than two (2.0) and not more than two and five-tenths (2.5) milligrams of vitamin B (thiamine); not less than one and two-tenths (1.2) and not more than one and five-tenths (1.5) milligrams of riboflavin; not less than sixteen (16.0) and not more than twenty (20.0) milligrams of niacin (nicotinic acid); not less than thirteen (13.0) and not more than sixteen and five-tenths (16.5) milligrams of iron; except that self-rising flour shall contain, in addition to the above ingredients, not less than five hundred (500) and not more than one thousand five hundred (1,500) milligrams of calcium.

(2) White bread shall contain in each pound not less than one and one-tenth (1.1) and not more than one and eight-tenths (1.8) milligrams of vitamin B (thiamine); not less than seven-tenths (0.7) and not more than one and six-tenths (1.6) milligrams of riboflavin; not less than ten (10.0) and not more than fifteen (15.0) milligrams of niacin (nicotinic acid); not less than eight (8.0) and not more than twelve and five-tenths (12.5) milligrams of iron.

(3) Cornmeal and corn (hominy) grits shall contain in each pound not less than two (2.0) and not more than three (3.0) milligrams of vitamin B_1 (thiamine); not less than one and two-tenths (1.2) and not more than one and eight-tenths (1.8) milligrams of riboflavin; not less than sixteen (16.0) and not more than twenty-four (24.0) milligrams of niacin (nicotinic acid); not less than thirteen (13.0) and not more than twenty-six (26.0) milligrams of iron.

(4) Enrichment may be accomplished by the addition of vitamins from a natural or synthetic source, or other harmless and assimilable enriching

ingredients which will accomplish the purpose of this Article and will be acceptable under the North Carolina Food, Drug and Cosmetic Act.

(5) The enriching ingredients required under subdivisions (1), (2) and (3) of this section may be added in a harmless carrier which does not impair the enriched products; provided,

a. That such carrier is used only in quantity necessary to effect uniform mixture in the finished products;

b. That the concentration of enriching ingredients does not differ more than fifteen percent (15%) between top and bottom of containers following subjection to normal handling and transportation; and

c. That enriched grits be so stabilized that loss of vitamins and minerals from customary rinsing before cooking shall not exceed ten percent (10%). (1945, c. 641, s. 3; 1955, c. 630, s. 2.)

§ 106-219.4. Products exempted. — The terms of this Article shall not apply:

(1) To white flour, cornmeal and corn grits sold to bakers or other commercial secondary processors; provided, the purchaser furnishes to the seller an approved certificate of intent to use said flour, grits or cornmeal solely in the production of the products covered in this Article; or in the manufacture of legitimate products not covered by the provisions of this Article.

(2) To whole wheat flour or bread made from the entire wheat berry; provided, that flour or bread made from the whole wheat berry, or various parts thereof, mixed with white flour shall contain vitamins and minerals equal to that required for the respective enriched products as defined in G.S. 106-219.3(1) and (2).

(3) To the further enrichment of the products covered in this Article when done so as to comply with standards and labeling requirements under the North Carolina Food, Drug and Cosmetic Act.

(4) To products ground for the producer's use from the producer's grain; provided, that such products shall become subject to this Article when offered for sale. (1945, c. 641, s. 4; 1955, c. 630, s. 3.)

§ 106-219.5. Enforcement by Commissioner. — (a) The provisions of this Article shall be enforced by the Commissioner of Agriculture, who is hereby directed, and he or his duly authorized agents shall have the authority to conduct examinations and investigations and, for the purpose of inspection and collection of samples for analysis, to enter, during business hours, all mills, storages, or other establishments or vehicles where products covered in this Article are, or upon reasonable ground are believed to be, processed, contained, transported or sold.

(b) In the event that there be shortage or imminence of shortage of enriching ingredients required under G.S. 106-219.3(1) and (2), the Commissioner shall obtain the facts from all proper and authorized sources or from testimony produced at public hearing and if findings show that the distribution of a food may be substantially impeded by enforcement, he shall immediately order suspension of such requirements as threaten distribution; provided, such suspension shall be revoked as soon as supplies of enriching ingredients are again available. (1945, c. 641, s. 5.)

§ 106-219.6. Board authorized to make regulations; hearings. — The authority for promulgating regulations for the efficient enforcement of this Article, and for bringing into force the provisions under G.S. 106-219.3(4) is hereby vested in the Board of Agriculture, and the Board is hereby authorized to make standards hereunder conform insofar as practicable, with interstate standards. Actions under this section shall follow proper public notice and hearing. (1945, c. 641, s. 6; 1955, c. 630, s. 4.)

§ 106-219.7. Violation a misdemeanor. — Any person who violates any of the provisions of this Article shall be guilty of a misdemeanor and upon conviction thereof shall be subject to a fine for each offense of not more than one hundred dollars ($100.00) or to imprisonment of not more than 30 days, or to both such fine and imprisonment. (1945, c. 641, s. 7.)

§ 106-219.8. Application of Article 12. — All of the provisions of Article 12 of this Chapter, said Article being entitled "Food, Drugs and Cosmetics," as far as the same are pertinent shall be applicable to the foods, ingredients and substances defined in this Article, and all of the remedies contained in said Article 12 are hereby made available to the Commissioner, and to the Commissioner and the Board, for the enforcement of this Article. (1945, c. 641, s. 8.)

§ 106-219.9. Exemptions from Article. — This Article shall not apply to the delivery by a miller to a producer or owner of cornmeal or corn grits, ground by the miller from the producer's or owner's corn for use in the producer's or owner's own home when the miller is paid in corn for such milling service; however, if said producer or owner desires the health benefit for his family and requests enrichment the miller is required by this Article to enrich according to the hereinbefore-mentioned standards.

Nothing in this Article shall prevent the manufacture and sale of plain or enriched cornmeal or grits when labeled as such; nor shall this Article apply to corn raised, ground and consumed, within the borders of any county.

The provision of this Article shall not apply to grist mills operated by two or less employees. (1945, c. 641, s. 9½; 1955, c. 630, ss. 4½-5½.)

ARTICLE 22.

Inspection of Bakeries.

§ 106-220. Sanitary condition of rooms; drainage; toilets. — Every room or other place occupied or used as a bakery for the preparation, production, storage, or display of bread, cakes, or other bakery products intended for sale for human consumption, shall be clean, properly lighted, and ventilated. The floors, walls, and ceilings of the rooms in which the dough or pastry is mixed, handled, or prepared for baking, or in which the bakery products or ingredients of such products are otherwise handled, stored, or displayed, shall be kept and maintained in a clean and sanitary condition. All openings into such rooms, including windows and doors, shall be properly screened to exclude flies. Every such bakery shall be provided with adequate drainage and suitable wash sinks. If a toilet or water closet is maintained in connection with such bakery, it must be of sanitary construction, and such toilet or water closet shall be well ventilated and kept in a sanitary condition. (1921, c. 173, s. 1; C. S., s. 7251(k).)

§ 106-221. Tables, shelves and implements; refuse; sleeping rooms. — All tables, shelves, troughs, trays, receptacles, utensils, implements, and machinery used in preparing, mixing or handling bakery products or the ingredients of same, must be thoroughly cleaned daily when in use, and kept in a clean, sanitary condition. All refuse, dirt, and waste matter subject to decomposition and decay incident to the production of bakery products must be removed from the bakery daily. The workrooms of bakeries, where bakery products are made, stored or displayed, shall not be used as sleeping or living rooms, and shall at all times be separate and closed from any such room. (1921, c. 173, s. 2; C. S., s. 7251(l).)

§ 106-222. Employees; sitting or lying on tables; cleanliness. — No employee or other person shall sit or lie upon any of the tables, troughs, shelves, etc., which are used for the dough or other bakery products. Before beginning

the work of preparing or mixing the ingredients, or after using toilet or water closet, every person engaged in the preparation or handling of bakery products shall wash the hands and arms thoroughly, and for this purpose sufficient wash basins or sinks, together with soap and clean towels, shall be provided by the bakery. (1921, c. 173, s. 3; C. S., s. 7251(m).)

§ 106-223. Use of tobacco. — No person shall use tobacco in any form in any bakery or bread-manufacturing plant where bread or other bakery products are manufactured or stored. (1921, c. 173, s. 3a; C. S., s. 7251(n).)

§ 106-224. Ingredients and materials. — All ingredients used in the manufacture or making of bread or any other bakery products shall be pure and wholesome, and shall contain no substance that is poisonous or deleterious to health. All materials and ingredients used in bakery products shall be stored, handled, and kept in a way to protect them from spoilage and contamination, and no material shall be used which is spoiled or contaminated, or which may render the product unwholesome or unfit for food. (1921, c. 173, s. 4; C. S., s. 7251(o).)

§ 106-225. Adulterants; stale products; infections. — No material or ingredient may be used which may deceive the purchaser, or which lowers or lessens the nutritive value of the product. No bread or other bakery products shall be sold or offered for sale for human food that has by age or otherwise become stale. All handling or sale of bread or other bakery products and all practices connected therewith shall be conducted so as to prevent the distribution of contamination or diseases and so as to prevent the distribution of the bakery infection in bread commonly known as "rope" or other bakery infections. No bread or other bakery products shall be returned by any dealer, restaurant, cafe or hotel keeper to bakery or distributor after same has been in stock where it may have been subject to contamination, and no bakery or distributor shall directly or indirectly accept any such bread or other bakery products or make any allowance for such products. (1921, c. 173, s. 5; C. S., s. 7251(p); 1925, c. 286.)

§ 106-225.1. Bakery products containing souvenirs, trinkets, etc., which may endanger consumers. — No bread or other bakery product shall contain or have in direct contact with it trinkets, metal objects, money, pictures, cardboard cutouts, balloons or other objects or materials, by way of souvenirs, premiums or otherwise, which may endanger consumers by contamination arising from insanitation, from contact with printing inks, paints or other coatings, materials or substances which are not suitable for contact with food or which may in any way expose consumers to danger of injury because of biting into or swallowing such materials or objects: Except, that these provisions shall not be interpreted to prohibit the safe and proper use of such items as cake supports, decorations and trimmings or the placing of such objects as dishes and spoons in unfinished foods when this is done in a manner which in no way endangers consumers. (1949, c. 985.)

§ 106-225.2. New bags or other new containers required for grain cereal products. — No person, firm, association, or corporation, and no flour, corn or other cereal mill, or the owner or operator of same, and no bakery or food-processing establishment, or the owner or operator of same, shall do, or suffer or permit to be done, any of the following acts:

(1) Sell or offer for sale any flour, cornmeal, or other grain cereal product for human consumption which has been packed in bags or containers that have been previously used for any purpose, or

(2) Use any except new bags or other new containers for the packing of flour, cornmeal or other grain cereal products for human consumption, or

(3) Import, ship, or cause to be shipped into the State of North Carolina any flour, cornmeal or other grain cereal product for human consumption unless such products are packed in new bags or other new containers which have not been previously used, or

(4) Use in foods for human consumption any flour, cornmeal or other grain cereal product which has been packed in used bags or in other containers which have been previously used. (1949, c. 985.)

§ 106-225.3. Unlawful sale of bread, rolls or buns. — (a) In accordance with Article 12, Chapter 106, G.S. 106-129(2)d, of the North Carolina Food, Drug and Cosmetic Act, the General Assembly finds that certain white bread products when artificially colored are misleading to the consumer in that such products convey a visual appearance of richness which is in fact not present in the product.

Therefore, no loaves of white bread, white rolls, or white buns, as defined in Chapter XV, Article 2, §§ 15-6, 15-7, 15-8, 15-9 and 15-10, Bakeries and Bakery Products, of the Rules, Regulations, Definitions and Standards of the North Carolina Department of Agriculture, or white biscuits, which are artificially colored by either natural or synthetic dyes, pigments, or other means, to simulate an appearance of richness associated with use of distinctive quantities of such ingredients as butter or eggs, shall be sold, or delivered, held or offered for sale, whether it is a completely baked, partially baked or unbaked product.

This section shall include the so-called "brown and serve," "bake and serve" and "quick bread" products and the like, which may be leavened by officially accepted chemical agents, natural organic agents such as yeast, mechanical means, or any combination of these.

The term "white biscuits" as used herein shall be deemed a commercial or so-called "home-style" bread product, also known as "raised biscuits," "combination biscuits," "air-leavened biscuits," and the like, and made from dough consisting basically of flour, water or other moistening agent such as milk or buttermilk, shortening, and leavening, together with any officially accepted optional ingredients; such dough is cut or dropped into small shapes ready for baking.

(b) Any person, firm or corporation who shall violate this section shall be guilty of a misdemeanor and upon conviction thereof shall be punished as provided in G.S. 106-230. (1969, c. 1121, ss. 1, 2; 1971, c. 475; 1973, c. 293.)

Editor's Note. — The 1973 amendment substituted "or" for "and/or" between "butter" and "eggs" and substituted "it is a" for "as" preceding "completely baked" near the end of the second paragraph.

Statute Prohibits the Sale in This State of Refrigerated Dough Biscuit Products Containing Artificially Colored Shortening Chips Which Resemble Butter. — See opinion of Attorney General to Mr. W.Y. Cobb, State Chemist, Department of Agriculture, 41 N.C.A.G. 674 (1971).

§ 106-226. Department of Agriculture to enforce law; examination of plant and products. — It shall be the duty of the Department of Agriculture to enforce this Article, and the Board of Agriculture shall cause to be made by the experts of the Department such examinations of plants and products named herein as are necessary to insure proper compliance with the provisions of this Article. For the purpose of inspection, the authorized experts of the Department shall have authority, during business hours, to enter all bakeries or storage rooms where bakery products are made, stored, or kept, and any person who shall prevent or attempt to prevent any duly authorized expert in the performance

of his duty in connection with this Article, shall be guilty of a violation of this Article. (1921, c. 173, s. 6; C. S., s. 7251(q).)

§ 106-227. Closing of plant; report of violation of Article to district attorney. — If it shall appear from examination that any provision of this Article or any rule or regulation of the Board of Agriculture has been violated, the Commissioner of Agriculture shall have authority to order the bakery or place closed until the law or regulation has been complied with. Upon refusal or failure of the owner or operator of any bakery to immediately close such bakery when so ordered by the Commissioner, the Commissioner may immediately apply to, and any regular, special or emergency superior court judge may, without notice, order such bakery closed until the law or regulation has been complied with; provided, that the owner or operator of such bakery may on written motion demand a hearing as to whether such order of closing shall remain in effect and such hearing shall be held within seven days of such written motion. At such hearing the superior court judge conducting such hearing may rescind, modify or affirm such order of closing.

In addition to the civil remedies provided herein, the Commissioner may also certify the facts to the district attorney of the district in which the violation occurred for criminal prosecution. (1921, c. 173, s. 7; C. S., s. 7251(r); 1971, c. 474, s. 1; 1973, c. 47, s. 2.)

Editor's Note. — The 1973 amendment substituted "district attorney" for "solicitor" in the last paragraph.

§ 106-228. Regulations; establishment; violation. — The Board of Agriculture is authorized to establish such regulations, not in conflict with this Article, as may be necessary to make provisions of this Article effective, and to insure the proper compliance of same, and a violation of the regulations shall be deemed to be a violation of this Article. (1921, c. 173, s. 8; C. S., s. 7251(s).)

§ 106-229. Inspection fee. — For the purpose of defraying expenses incurred in the enforcement of this Article the owner or operator of each public bakery or bakery furnishing bakery products to the public operated in this State shall pay to the Commissioner of Agriculture during the month of May of each year, an inspection fee of ten dollars ($10.00): Provided, that no inspection fee shall be required of farm women in North Carolina who make cakes and breads and sell the same on the home demonstration curb markets. (1921, c. 173, s. 9; C. S., s. 7251(t); 1937, c. 281.)

§ 106-230. Violation of Article a misdemeanor. — Any person, firm or corporation who shall violate the provisions of this Article or any rule or regulation of the Board of Agriculture made under authority of this Article shall be guilty of a misdemeanor and shall be fined not in excess of one hundred dollars ($100.00) or imprisoned for not in excess of 30 days, or both fined and imprisoned; provided however, that for a second or subsequent violation a fine not in excess of five hundred dollars ($500.00) or imprisonment for not in excess of 90 days, or both, may be imposed by the court. (1921, c. 173, s. 10; C. S., s. 7251(u); 1971, c. 474, s. 2.)

§ 106-231. Inspectors. — The inspectors who shall carry out the provisions of this Article shall be the same inspectors who shall be sent out by the Department of Agriculture to inspect bottling works and general food inspections. (1921, c. 173, s. 10a; C. S., s. 7251(v).)

§ 106-232. Article supplemental to municipal ordinances. — Nothing in this Article shall have the effect of repealing or rendering void ordinances upon this

subject now in force in any municipality in North Carolina, but this Article shall be construed to be supplemental and in addition thereto. (1921, c. 173, s. 11; C. S., s. 7251(w).)

ARTICLE 23.

Oleomargarine.

§ 106-233. Definitions; singular or plural. — (a) The word "person" shall mean person, firm, or corporation, either principal or agent.

(b) Any word used shall indicate the singular or plural as the case demands.

(c) The word "oleomargarine" shall mean: all substance heretofore known as oleomargarine, oleo, oleomargarine oil, butterine, lardine, suine, and neutral; all mixtures and compounds of tallow, beef extracts, suet, lard oil, fish oil, or fish fat, vegetable oil, annato, and other coloring matter, intestinal fat and offal fat, if

(1) Made in imitation or semblance of butter, or

(2) Calculated or intended to be sold as butter or for butter, or

(3) Churned, emulsified, or mixed in cream, milk, water, or other liquid and containing moisture in excess of one per centum of common salt.

This section shall not apply to puff-pastry shortening not churned or emulsified in milk or cream, and having a melting point of 118 degrees Fahrenheit or more, nor to any of the following containing condiments or spices: salad dressings, mayonnaise dressings, or mayonnaise products. As used in this Article, the term "oleomargarine" shall be deemed applicable to the food product known as margarine and any requirement herein contained for labeling or display of the word "oleomargarine" shall be deemed sufficiently complied with by the use of the word "margarine." (1931, c. 229, s. 1; 1949, c. 978, s. 1.)

§ 106-234: Repealed by Session Laws 1949, c. 978, s. 2.

§ 106-235: Repealed by Session Laws 1963, c. 1135.

§ 106-236. Display of signs. — (a) Marking Containers. — It shall be unlawful for any person or any agent thereof to sell or offer, or expose for sale, or have in possession with intent to sell, any oleomargarine which is not marked and distinguished by the word "oleomargarine" on the outside of each tub, package, or parcel.

(b) Notice in Public Eating Places. — No person shall possess in a form ready for serving yellow oleomargarine at a public eating place unless a notice that oleomargarine is served is displayed prominently and conspicuously in such place and in such manner as to render it likely to be read and understood by the ordinary individual being served in such eating place or is printed or is otherwise set forth on the menu in type or lettering not smaller than normally used to designate the serving of other food items; and no person shall serve yellow oleomargarine at a public eating place, whether or not any charge is made therefor, unless each separate serving bears or is accompanied by labeling identifying it as oleomargarine. (1931, c. 229, s. 4; 1939, c. 282, s. 3; 1945, c. 523, s. 3; 1949, c. 978, s. 4.)

§ 106-237. Enforcement of Article; revocation of license. — This Article shall be administered and enforced by the State Department of Agriculture, which shall prescribe necessary rules and regulations therefor. Any license which is issued under the terms and conditions prescribed in G.S. 106-235 can be revoked by the State Commissioner of Agriculture upon the submission to him of evidence that this Article has been violated by the holder of such license. (1931, c. 229, s. 5.)

Editor's Note. — Section 106-235, referred to in the second sentence, was repealed by Session Laws 1963, c. 1135.

§ 106-238. Penalties. — Every person, firm, or corporation, and every officer, agent, servant, or employee of such person, firm, or corporation who violates any of the provisions of this Article shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than one hundred dollars ($100.00) nor more than five hundred dollars ($500.00) or by imprisonment in the county jail for not more than three months, or both, at the discretion of the court. (1931, c. 229, s. 6.)

ARTICLE 24.

Excise Tax on Certain Oleomargarines.

§ 106-239. Tax imposed; rules and regulations; penalties; disposition of proceeds. — There is hereby imposed an excise tax of ten cents (10¢) per pound on all oleomargarine sold, offered or exposed for sale, or exchanged in the State of North Carolina, containing any fat and/or oil ingredient other than any of the following fats and/or oils: cottonseed oil, peanut oil, corn oil, soya bean oil, oleo oil from cattle, oleo stock from cattle, oleo stearine from cattle, neutral lard from hogs, or milk fat or any other vegetable fat or oil produced in the United States of America from agricultural commodities grown or produced in the United States of America. Such excise tax shall be in the form of a revenue stamp in such denominations as will best carry out the provisions of the law. Said stamps shall be properly safeguarded as to their manufacture, preservation and distribution and shall be in the charge of the State Department of Agriculture.

The State Department of Agriculture is hereby empowered to promulgate such rules and regulations as are consistent with the provisions of this section.

Any person violating any of the provisions of this section, or any of the rules or regulations promulgated by the State Department of Agriculture for the purpose of carrying out its provisions, shall be guilty of a misdemeanor, and upon conviction shall be fined in any sum not less than twenty-five dollars ($25.00) nor more than two hundred dollars ($200.00), or imprisoned in the county jail not to exceed two months, or both fined and imprisoned.

All moneys derived from the sale of revenue stamps hereunder shall be paid into the State Department of Agriculture for the enforcement of this section. (1935, c. 328; 1965, c. 697.)

ARTICLE 25.

North Carolina Egg Law.

§§ 106-240 to 106-245: Repealed by Session Laws 1955, c. 213, s. 14.

§§ 106-245.1 to 106-245.12: Repealed by Session Laws 1965, c. 1138, s. 3.

ARTICLE 25A.

North Carolina Egg Law.

§ 106-245.13. Short title; scope; rule of construction. — This Article is named and may be cited as the North Carolina Egg Law and relates to eggs sold in the State of North Carolina. Words used in the singular form in this

Article shall include the plural, and vice versa as the cause may require. (1965, c. 1138, s. 1.)

Editor's Note. — The act inserting this Article repealed former Article 25, which was also entitled "North Carolina Egg Law." Where former provisions were similar to the new provisions, the historical citations to the repealed sections have been added to the new sections.

§ 106-245.14. Definitions. — The following words, terms, and phrases shall be construed for the purpose of this Article as follows:

(1) "Authorized representative" means the Commissioner or any duly authorized agent or employee who is assigned to carry out the provisions of this Article.
(2) "Candling and grading" means selecting eggs as to their conformity to the standards of quality and size or weight class preparatory to marketing them as a specific grade and size or weight class.
(3) "Commissioner" means the North Carolina Commissioner of Agriculture.
(4) "Consumer" means any person who purchases eggs for his or her use or his or her own family use or consumption and not for resale.
(5) "Container" means any box, case, basket, carton, sack, bag, or other receptacle containing eggs. "Subcontainer" means any container used within another container.
(6) "Distributor" means any person, producer, firm or corporation offering for sale or distributing eggs in the State to a retailer, cafe, restaurant, or any other establishment offering for sale to consumers, including but not limited to institutional consumers as defined in this Article. Distributors also shall include any person, producer, firm or corporation distributing eggs to his or its own retail outlets or stores but shall not include any person, firm or corporation engaged only to haul or transport eggs.
(7) "Eggs" means product of a domesticated chicken in the shell or as further processed egg products.
(8) "Facilities" means any room, compartment, refrigerator or vehicle used in handling eggs in any manner.
(9) "Grades" shall mean and include specifications defining the limit of variation in quality of two or more eggs.
(10) "Institutional consumer" means a restaurant, hotel, licensed boarding house, commercial bakery or any other institution in which eggs are prepared as food for use by its patrons, residents or patients.
(11) "Law" means the provisions of this Article and all rules and regulations issued hereunder.
(12) "Lots" means a physical grouping of eggs or containers with eggs therein, as determined by the North Carolina Department of Agriculture.
(13) "Marketing of eggs" or "market" means the sale, offer for sale, gift, barter, exchange, advertising, branding, marking, labeling, grading, or other preparatory operation or distribution in any manner of eggs or containers of eggs as defined in this Article.
(14) "Packer" means any person that is engaged in grading, shell treating or packing eggs for sale to consumers, direct or through distribution outlets of stores.
(15) "Person" means and includes any individual, producer, firm, partnership, exchange, association, trustee, receiver, corporation, or any other business organization and any member, officer, or employee thereof.
(16) "Retailer" means any person who markets eggs to consumers.

(17) "Size or weight class" means a classification of eggs based on weight at the rate per dozen.

(18) "Standards for quality" means specifications of the physical characteristics of any or all of the component parts or the individual egg. (1965, c. 1138, s. 1.)

§ 106-245.15. Designation of grade and class on containers required; conformity with designation; exemption. — No person shall market to consumers, institutional consumers or retailers or expose for that purpose any eggs unless there is clearly designated therewith on the container the grade and size or weight class established in accordance with the provisions of this Article and such eggs shall conform to the designated grade and size or weight class (except when sold on contract to a United States governmental agency); provided, however, a producer marketing eggs of his own production shall be exempt from this section when such marketing occurs on the premises where the eggs are produced, processed, or when ungraded sales do not exceed 30 dozen per week. (1955, c. 213, s. 7; 1965, c. 1138, s. 1; 1973, c. 739, s. 1.)

Editor's Note.—The 1973 amendment inserted "processed" and "ungraded" and substituted "30 dozen" for "60 dozen" near the end of the section.

§ 106-245.16. Standards, grades and weight classes. — The Board of Agriculture shall establish and promulgate such standards of quality, grades and weight classes for eggs sold or offered for sale in this State as will protect the consumer and the institutional consumer from eggs which are injurious or likely to be injurious to health by reason of the condition of the shell, or contents thereof, or by reason of the manner in which eggs are processed, handled, shipped, stored, displayed, sold or offered for sale. Such standards of quality, grades and weight classes as are promulgated and established by the Board shall also promote honesty and fair dealings in the poultry industry. Such standards, grades and weight classes may be modified or altered by the Board whenever it deems it necessary. (1955, c. 213, s. 9; 1965, c. 1138, s. 1; 1969, c. 139, s. 1.)

§ 106-245.17. Stop-sale orders. — If an authorized representative of the North Carolina Department of Agriculture shall determine, after inspection, that any lot of eggs is in violation of this Article, he may issue a "stop-sale order" as to such lot or lots of eggs and forthwith notify the owner or custodian of such eggs. Such order shall specify the reason for its issuance. A stop-sale order shall prohibit the further marketing of the eggs subject to it until such eggs are released by the State agency. (1965, c. 1138, s. 1.)

§ 106-245.18. Container labeling. — (a) Any container or subcontainer in which eggs are marketed shall bear on the outside portion of the container, but not be limited to, the following:

(1) The applicable consumer grade provided for in this Article.

(2) The applicable size or weight class provided for in this Article.

(3) The word "eggs."

(4) The numerical count of the contents.

(5) The name and address of the packer or distributor. Words and numerals used to designate the grade and size shall be in clearly legible boldfaced type at least three-eighths inch in height. Any person intending to reuse a container shall obscure any inappropriate labeling thereon and relabel the container in accordance with this section prior to refilling the container with eggs. In any case, the address of the packer or distributor shall be shown in letters not exceeding three-eighths inch in height.

(b) The term "fresh" may only be applied to eggs conforming to the specifications for Grade A or better. No other descriptive term other than applicable grade and size may be applied. (1965, c. 1138, s. 1; 1973, c. 739, s. 2.)

Editor's Note.—The 1973 amendment deleted "to consumers" following "marketed" in the introductory paragraph in subsection (a).

§ 106-245.19. Invoices. — (a) Any person, except a producer marketing eggs to another person for candling and grading, when marketing eggs to a retailer, institutional consumer, or other person shall furnish to the purchaser at the time of delivery an invoice showing date of sale, name and address of the seller, name of purchaser, quantity, grade and size-weight classification.

(b) A copy of such invoice shall be kept on file by both the person selling and the purchaser at their respective places of business for a period of at least 30 days. (1955, c. 213, s. 7; 1965, c. 1138, s. 1.)

§ 106-245.20. Advertisements. — No person shall advertise eggs for sale at a given price unless the unabbreviated grade or quality and size-weight are conspicuously designated in block letters at least half as high as the tallest letter in the word "eggs" or the tallest figure in the price, whichever is larger. (1955, c. 213, s. 7; 1965, c. 1138, s. 1.)

§ 106-245.21. Rules and regulations. — The North Carolina Board of Agriculture is authorized to make and amend, from time to time, such rules and regulations as may be necessary to administer and enforce the provisions of this Article. Such rules and regulations shall be published and copies thereof made available to interested parties upon request therefor. (1955, c. 213, s. 8; 1965, c. 1138, s. 1.)

§ 106-245.22. Sanitation. — (a) Any person engaged in the marketing of or the processing of eggs for marketing shall, in addition to maintaining egg-handling facilities in a manner commensurate with laws governing food establishments, keep the eggs in a proper environment, in accordance with regulations promulgated by the North Carolina Board of Agriculture, to maintain quality. In addition, any container, including the packaging material therein, when used for the marketing of eggs shall be clean, unbroken and free from foreign odor. In all instances eggs shall, so far as possible and by use of all reasonable means, be protected from being soiled or dirtied by foreign matter. When cleaning is necessary a sanitary method approved by the Commissioner shall be employed.

(b) Repealed by Session Laws 1973, c. 739, s. 3. (1965, c. 1138, s. 1; 1973, c. 739, s. 3.)

Editor's Note. — The 1973 amendment repealed subsection (b), exempting producers selling eggs of their own production in certain circumstances.

§ 106-245.23. Power of Commissioner. — The Commissioner, or his authorized agents or representatives, may enter, during the regular business hours, any establishment or facility where eggs are bought, stored, offered for sale, or processed, in order to inspect and examine eggs, egg containers, and the premises, and to examine the records of such establishments or facilities relating thereto. (1955, c. 213, s. 10; 1965, c. 1138, s. 1.)

§ 106-245.24. Penalties for violations; enjoining violations; venue. — (a) Any person who violates any provision of this Article shall be guilty of a misdemeanor, punishable by a fine of not less than twenty-five dollars ($25.00)

and not more than two hundred dollars ($200.00), or imprisonment for not more than 30 days, or both.

(b) In addition to the criminal penalties provided for above, the Commissioner of Agriculture may apply by equity to a court of competent jurisdiction, and such court shall have jurisdiction and for cause shown to grant temporary or permanent injunction, or both, restraining any person from violating, or continuing to violate, any provisions of this Article.

(c) Any proceeding for a violation of this Article may be brought in the county where the violator resides, has a place of business or principal office or where the act or omission or part thereof, complained of occurred. (1955, c. 213, s. 12; 1965, c. 1138, s. 1.)

§ 106-245.25. Warnings in lieu of criminal prosecutions. — Nothing in this Article shall be construed as requiring the Commissioner to report for criminal prosecution violations of this Article whenever he believes that the public interest will be adequately served and compliance with the Article obtained by a suitable written notice or warning. (1965, c. 1138, s. 1.)

§ 106-245.26. Remedies cumulative. — Each remedy provided in this Article shall be in addition to and not exclusive of any other remedy provided for in this Article. (1965, c. 1138, s. 1.)

§ 106-245.27. Persons punishable as principals. — (a) Whoever commits any act prohibited by any section of this Article or aids, abets, induces, or procures its commission, is punishable as a principal.

(b) Whoever causes an act to be done which if directly performed by him or another would be a violation of the provisions of this Article, is punishable as a principal. (1965, c. 1138, s. 1.)

§ 106-245.28. Act of agent as that of principal. — In construing and enforcing the provisions of this Article, the act, omission, or failure, of any agent, officer or other person acting for or employed by an individual, association, partnership, corporation, or firm, within the scope of his employment or office shall be deemed to be the act, omission, or failure to [of] the individual, association, partnership, corporation, or firm as well as that of the person. (1965, c. 1138, s. 1.)

Article 26.

Inspection of Ice Cream Plants, Creameries, and Cheese Factories.

§ 106-246. Cleanliness and sanitation required; washrooms and toilets, living and sleeping rooms; animals. — For the protection of the health of the people of the State, all places where ice cream, milk shakes, milk sherbet, sherbet, water ices and other similar frozen or semifrozen food products are made for sale, all creameries, butter and cheese factories, when in operation, shall be kept clean and in a sanitary condition. The floors, walls, and ceilings of all workrooms where the products of plants named herein are made, mixed, stored or handled shall be such that same can be kept in a clean and sanitary condition. All windows, doors, and other openings shall be effectively screened during fly season. Suitable washrooms shall be maintained, and if a toilet is attached, it shall be of sanitary construction and kept in a sanitary condition. No person shall be allowed to live or sleep in such factory unless rooms so occupied are separate and apart from the work or storage rooms. No horses, cows, or other animal shall be kept in such factories or close enough to contaminate products of same unless separated by impenetrable wall without doors, windows or other openings. (1921, c. 169, s. 1; C. S., s. 7251(a); 1933, c. 431, s. 1; 1959, c. 707, s. 1.)

§ 106-247. Cleaning and sterilization of vessels and utensils. — Suitable means or appliances shall be provided for the proper cleaning or sterilizing of freezers, vats, mixing cans or tanks, conveyors, and all utensils, tools and implements used in making or handling cream, ice cream, butter or cheese and all such apparatus shall be thoroughly cleaned as promptly after use as practicable. (1921, c. 169, s. 2; C. S., s. 7251(b).)

§ 106-248. Purity of products. — All cream, ice cream, butter, cheese or other product produced in places named herein shall be pure, wholesome and not deleterious to health, and shall comply with the standards of purity, sanitation, and rules and regulations of the Board of Agriculture provided for in G.S. 106-253; and whole milk, sweet cream, ice cream mix, and other mixes shipped into this State from other states and used in the manufacture of frozen or semifrozen dairy products processed or sold in this State shall meet the same requirements and be subject to the same regulations and shall carry a tag or label showing name of product, name and address of processor and date of pasteurization. (1921, c. 169, s. 3; C. S., s. 7251(c); 1933, c. 431, s. 2; 1959, c. 707, s. 2.)

§ 106-249. Receivers of products to clean utensils before return. — Every person, company, or corporation who shall receive milk, cream, or ice cream which is delivered in cans, bottles, or other receptacles, shall thoroughly clean same as soon as practicable after the contents are removed and before the said receptacles are returned to shipper or person from whom the same was received or before such receptacles are delivered to any carrier to be returned to shipper. (1921, c. 169, s. 4; C. S., s. 7251(d).)

§ 106-250. Correct tests of butterfat; tests by Board of Agriculture. — Creameries and factories that purchase milk and cream from producers of same on a butterfat basis, and pay for same on their own test, shall make and pay on correct test, and any failure to do so shall constitute a violation of this Article. The Board of Agriculture, under regulations provided for in G.S. 106-253, shall have such test made of milk and cream sold to factories named herein that will show if dishonest tests and practices are used by the purchasers of such products. (1921, c. 169, s. 5; C. S., s. 7251(e).)

§ 106-251. Department of Agriculture to enforce law; examinations. — It shall be the duty of the Department of Agriculture to enforce this Article, and the Board of Agriculture shall cause to be made by the experts of the Department such examinations of plants and products named herein as are necessary to insure the compliance with the provisions of this Article. For the purpose of inspection, the authorized experts of the Department shall have authority, during business hours, to enter all plants or storage rooms where cream, ice cream, butter, or cheese or ingredients used in the same are made, stored, or kept, and any person who shall hinder, prevent, or attempt to prevent any duly authorized expert of the Department in the performance of his duty in connection with this Article shall be guilty of a violation of this Article. (1921, c. 169, s. 6; C. S., s. 7251(f).)

§ 106-252. Closure of plants for violation of Article; certificate to district attorney of district. — If it shall appear from the examinations that any provision of this Article has been violated, the Commissioner of Agriculture shall have authority to order the plant or place of manufacture closed until the law is complied with. If the owner or operator of the place refuses or fails to comply with the order, law or regulations, the Commissioner shall then certify the facts in the case to the district attorney in the district in which the violation was committed. (1921, c. 169, s. 7; C. S., s. 7251(g); 1973, c. 47, s. 2.)

Editor's Note. — The 1973 amendment substituted "district attorney" for "solicitor" in the second sentence.

§ 106-253. Standards of purity and sanitation; regulating trade or brand names of frozen or semifrozen desserts. — The Board of Agriculture is authorized to make such definitions and to establish such standards of purity for products and sanitation for plants or places of manufacture named herein with such regulations, not in conflict with this Article, as shall be necessary to make provisions of this Article effective and insure the proper enforcement of same, and the violation of said standards of purity or regulations shall be deemed to be a violation of this Article. It shall be unlawful for any person, firm or corporation to use the words "cream," "milk," or "ice cream," or either of them, or any similar sounding word or terms, as a part of or in connection with any product, trade name or brand of any frozen or semifrozen dessert manufactured, sold or offered for sale and not in fact made from dairy products under and in accordance with regulations, definitions or standards approved or promulgated by the Board of Agriculture. (1921, c. 169, s. 8; C. S., s. 7251(h); 1933, c. 431, s. 3; 1945, c. 846; 1959, c. 707, s. 3.)

§ 106-254. Inspection fees; wholesalers; retailers and cheese factories. — For the purpose of defraying the expenses incurred in the enforcement of this Article, the owner, proprietor or operator of each ice cream factory where ice cream, milk shakes, milk sherbet, sherbet, water ices, mixes for frozen or semifrozen desserts and other similar frozen or semifrozen food products are made or stored, or any cheese factory or butter-processing plant that disposes of its products at wholesale to retail dealers for resale in this State shall pay to the Commissioner of Agriculture each year an inspection fee of twenty dollars ($20.00). Each maker of ice cream, milk shakes, milk sherbet, sherbet, water ices and/or other similar frozen or semifrozen food products who disposes of his product at retail only, and cheese factories, shall pay to the Commissioner of Agriculture an inspection fee of five dollars ($5.00) each year. The inspection fee of five dollars ($5.00) shall not apply to conventional spindle-type milk-shake mixers, but shall apply to milk-shake dispensing and vending machines, which operate on a continuous or automatic basis. (1921, c. 169, s. 9; C. S., s. 7251(i); 1933, c. 431, s. 4; 1959, c. 707, s. 4; 1961, c. 791.)

§ 106-255. Violation of Article a misdemeanor; punishment. — Any person, firm, or corporation who shall violate any of the provisions of this Article shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not to exceed twenty-five dollars ($25.00) for the first offense, and for each subsequent offense in the discretion of the court. (1921, c. 169, s. 10; C. S., s. 7251(j).)

Article 27.

Records of Purchases of Milk Products.

§ 106-256. Annual reports to Dairy Division by creameries, milk-distributing plants, etc. — Every person, firm or corporation owning or operating a milk-processing plant, creamery, milk-distributing or cream-buying station in this State, where milk or cream is received, shall file on or before April 1 of each year, upon blanks furnished, a report to the Dairy Division of the State Department of Agriculture, showing the amount of milk and cream received by such plants or stations during the calendar year preceding. The said report shall show the amount of butter, cheese, ice cream or other dairy products manufactured. (1939, c. 327, s. 1.)

§ 106-257. Records of purchases of cream. — Records of the purchase of cream shall be kept at each plant or station for a period of six months from the date of purchase, and shall show the date of purchase, the net pounds of cream purchased, the butterfat tests, the price of butterfat, and the amount paid therefor, in such manner as may be required on the report blanks provided. When payment for cream is made in cash, receipts of such payments shall be kept with the records; otherwise canceled checks or facsimile impressions shall be kept as receipts with records. Such records shall be available for inspection by any authorized representative of the Commissioner of Agriculture. (1939, c. 327, s. 2.)

§ 106-258. Individual plant records treated as confidential. — Any individual plant records shall be treated as confidential by anyone handling them and such individual records shall not be published or made accessible to any unauthorized person or representative. (1939, c. 327, s. 3.)

§ 106-259. Failure to comply with provisions of Article made misdemeanor. — Any person, firm or corporation owning or operating a creamery, cheese plant, condensed-milk plant, ice-cream plant, milk depot, or milk-distributing plant, or milk- or cream-buying station failing to comply with the provisions of this Article shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined or imprisoned in the discretion of the court. (1939, c. 327, s. 4.)

ARTICLE 28.

Records and Reports of Milk Distributors and Processors.

§ 106-260. "Milk" defined. — Wherever the word "milk" appears hereinafter in this Article, it shall be construed to include all whole milk, cream, chocolate milk, buttermilk, skim milk, special milk and all flavored milk, including flavored drinks, skim condensed, whole condensed, dry milks and evaporated. (1941, c. 162, s. 1; 1951, c. 1133, s. 1.)

§ 106-261. Reports to Commissioner of Agriculture as to milk purchased and sold. — Every person, firm or corporation that purchases milk for processing or distribution or sale, or that purchases milk for processing and distribution and sale, in North Carolina shall, not later than the twentieth of each month following the month such business is carried on, furnish information to the Commissioner of Agriculture, upon blanks to be furnished by him which will show a detailed statement of the quantities of the various classifications of milk purchased and the class in which milk was distributed or sold. Such report shall include all milk purchased from producers and other sources, imported, all milk sold to consumers, sold or transferred between plants, distributors, affiliates and subsidiaries, and all milk used in the manufacture of other dairy products; provided, however, that every person, firm or corporation engaged in purchasing milk and/or dairy products as defined in G.S. 106-260, for processing and manufacturing purposes only and who is not engaged in distributing and/or selling milk or milk products in fluid form, shall be required to report only the receipts of such milk or milk products and the quantities of dairy products manufactured. Provided, further, that the provisions of this section shall not apply to retail stores unless the same are owned, controlled or operated by milk processors and/or distributors. (1947, c. 162, s. 2; 1951, c. 1133, s. 2.)

§ 106-262. Powers of Commissioner of Agriculture. — The Commissioner of Agriculture is hereby authorized and empowered:

(1) To require such reports as will enable him to determine the quantities of milk purchased and the classification in which it was used or disposed;

(2) To designate any area of the State as a natural marketing area for the sale or use of milk or milk products;

(3) To set up classifications for the sale or use of milk or milk products for each marketing area after full, complete and impartial hearing. Due notice of such hearing shall be given.

(4) To make rules and regulations and issue orders necessary to carry out and enforce the provisions of this Article, including the supervision of producer bases and other production incentive plans; methods of uniform and equitable payments to all producers selling milk to the same firm, person or corporation; uniform methods of computing weights of milk and/or milk products; and maximum handling and transportation charges for milk sold and/or transferred between plants. (1941, c. 162, s. 3; 1951, c. 1133, s. 3.)

§ 106-263. Distribution of milk in classification higher than that in which purchased. — It shall be unlawful for any operator of a milk processing plant or any milk distributor, required to make reports under this Article, or their affiliates or subsidiaries, to sell, use, transfer, or distribute any milk in a classification higher than the classification in which it was purchased, except in an emergency declared and approved in writing by the local board of health having supervision of operators and distributors on such market for a period of two weeks, and such period may be extended if, in the opinion of the local board of health, an emergency still exists at the end of such two weeks' period. (1941, c. 162, s. 4.)

§ 106-264. Inspections and investigations by Commissioner. — For the purpose of administering this Article the Commissioner of Agriculture or his agent is hereby authorized to enter at all reasonable hours all places where milk is being stored, bottled, or processed, or where milk is being bought, sold, or handled, or where books, papers, records, or documents relating to such transactions are kept, and shall have the power to inspect and copy the same in any place within the State, and may take testimony for the purpose of ascertaining facts which in the judgment of the Commissioner are necessary to administer this Article. The Commissioner shall have the power to determine the truth and accuracy of said books, records, papers, documents, accounts, and reports required to be furnished by milk distributors, their affiliates or subsidiaries in accordance with the provisions of this Article. (1941, c. 162, s. 5.)

§ 106-265. Failure to file reports, etc., made unlawful. — It shall be unlawful for any person, firm or corporation engaged in the business herein regulated to fail to furnish the information and file the reports required by this Article, and each day's failure to furnish the reports required hereunder shall constitute a separate offense. (1941, c. 162, s. 6.)

§ 106-266. Violation made misdemeanor. — Any person, firm, or corporation violating any of the provisions of this Article and/or any rule, regulation or order promulgated in accordance with the provisions of this Article shall be guilty of a misdemeanor, and shall, upon conviction thereof, be fined not more than one thousand dollars ($1,000), or be imprisoned for not more than one year, or both fined and imprisoned in the discretion of the court. (1941, c. 162, s. 7; 1951, c. 1133, s. 4.)

ARTICLE 28A.

Regulation of Milk Brought into North Carolina from Other States.

§ 106-266.1. Requirements to be complied with by out-of-state shippers of milk or cream. — No person, firm, association or corporation shall ship, transport, carry, send or bring into this State any milk or cream for fluid distribution without first having applied for and obtained from the Commissioner of Agriculture of this State a permit authorizing such transaction, shipment or transportation. In order to defray the expenses of the enforcement of this Article, the Commissioner of Agriculture shall collect a fee of twenty-five dollars ($25.00) for the issuance of such permit. The Board of Agriculture is authorized and empowered to establish, determine, fix and promulgate rules and regulations containing all necessary definitions, conditions, standards and classifications of the type, kind, quality, conditions of production, sanitary conditions and other reasonable requirements that must be complied with before milk or cream is shipped, transported, carried or brought into this State, including compliance with the Milk Audit Law of this State. Before any person, firm, association or corporation ships, transports, brings, sends or carries any milk or cream into this State, advance notice of such shipment or transportation shall be given to the Commissioner of Agriculture of this State and contain such information as the Board of Agriculture shall prescribe by rules and regulations. The Commissioner of Agriculture is authorized to suspend, immediately upon notice to a permit holder, any permit issued under authority of this section if it is found by him that any of the conditions of the permit or any of the rules, regulations and laws have been violated. The holder of a permit so suspended shall be privileged at any time to apply for the reinstatement of such permit, and the Commissioner of Agriculture shall, immediately after prompt hearing and such other examinations or inspections as he deems proper, reinstate such permit if it is found that adequate measures have been taken to comply with and maintain the conditions of the permit, as originally issued or as amended. Any permit issued by the Commissioner of Agriculture under the authority of this section may be revoked after an opportunity for a hearing by the Commissioner of Agriculture, upon the violation by the holder of the permit of any of the terms, conditions, rules and regulations issued and promulgated by authority of this section. All milk or cream shipped, transported, carried, sent or brought into this State shall be sold to, consigned to, delivered to, be transported, sent or carried only to a person, firm, association or corporation or to a milk distributor in this State holding or possessing an unrevoked permit from the Commissioner of Agriculture authorizing the receiving or importation of such milk or cream. All unrevoked permits issued under the authority of this section shall become null and void after the expiration of December 31 of each year.

In order that a sufficient supply of milk or cream shall always be available for the inhabitants of the State the Commissioner of Agriculture may issue to approved permit holders, or to nonpermit holders, temporary emergency permits for limited periods or limited quantities of milk or cream and may restrict such permits to a limited area in accordance with such regulations as the Commissioner of Agriculture may prescribe for each temporary permit. (1949, c. 822.)

§ 106-266.2. Requirements and standards for distributors in this State distributing imported milk or cream. — No person, firm, association or corporation shall import, transport into, receive, bring into or cause to be imported or to be sent into this State from another state for the purpose of sale, for the purpose of offering for sale, for the purpose of distribution any milk or cream unless such person, firm, association or corporation has obtained a permit from the Commissioner of Agriculture for such purpose. All permits issued

under the authority of this section shall be issued after the payment of a fee of twenty-five dollars ($25.00) to the Commissioner of Agriculture. The permits issued hereunder shall be conditioned upon compliance by the applicant or holder with the rules and regulations and laws of North Carolina governing milk or cream and such other definitions and standards as may be established and promulgated by the Board of Agriculture. The Commissioner of Agriculture is authorized to suspend, immediately upon due notice, any permit issued under authority of this section if it is found by the Commissioner that any of the conditions of the permit have been violated. The holder of a permit so suspended shall be privileged at any time to apply for the reinstatement of such permit, and the Commissioner of Agriculture shall, immediately after prompt hearing, reinstate such permit if it is found that adequate measures have been taken to comply with and maintain the conditions of the permit as originally issued, or as amended. The permits issued hereunder may be revoked after due notice and an opportunity for hearing by the Commissioner of Agriculture upon a finding at such hearing of any violation of any of the conditions, terms or requirements established and promulgated by the Board of Agriculture or of any of the laws of the State governing milk or cream, including, but not by way of limitation, the Milk Audit Law and other dairy laws of the State. It shall be the duty of the Commissioner of Agriculture to issue and enforce a written or printed "stop-sale, use or removal" order to the owner or custodian of any quantity of milk or cream imported, transported, or brought into this State and to hold the same at a designated place when the Commissioner of Agriculture finds that said milk or cream does not meet the requirements of the provisions of this Article or the rules and regulations promulgated thereunder, until the law has been complied with and said milk or cream is released in writing by the Commissioner of Agriculture or said violation has been otherwise legally disposed of by written authority or by written order by the Commissioner of Agriculture directing the owner or custodian to remove the milk or cream from the State. The Commissioner of Agriculture shall release the milk or cream so withdrawn from the sale when the requirements of the provisions of this Article and the rules and regulations promulgated thereunder have been complied with and upon payment by the out-of-state shipper of all costs and expenses incurred in connection with the withdrawal. All unrevoked permits issued under the authority of this section shall become null and void after the expiration of December 31 of each year. All authority vested in the Commissioner of Agriculture by virtue of the provisions of this Article may, with like force and effect, be executed by such employees and agents of the Commissioner of Agriculture as may, from time to time, be designated by him for such purpose. The Commissioner of Agriculture or his duly authorized agent shall have free access at all reasonable hours to any dairy, milk-processing plant, distributing plant or any establishment, depot, tank, truck or vehicle which contains milk for the purpose of inspecting any milk or cream, containers, or any other establishment or device pertaining to the transportation, the distribution, bottling or storage of milk or cream for the purpose of determining whether any of the provisions of this Article or of the rules and regulations promulgated thereunder have been violated, and the Commissioner of Agriculture may secure samples of specimens of any such milk or cream after paying or offering to pay for such sample.

In order that a sufficient supply of milk or cream shall always be available for the inhabitants of the State the Commissioner of Agriculture may issue to permit holders, or nonpermit holders upon payment of a permit fee of twenty-five dollars ($25.00), temporary emergency permits for limited periods or limited quantities of milk or cream and may restrict such permits to a limited area or to a particular city or to a particular market or markets in accordance with such

regulations as the Commissioner of Agriculture may prescribe for each temporary permit. (1949, c. 822.)

§ 106-266.3. Power to make rules and regulations. — The Board of Agriculture is authorized to make such regulations not in conflict with this Article as shall be necessary to make the provisions of this Article effective and insure the proper enforcement of same, and a violation of such regulations shall be deemed a violation of this Article. (1949, c. 822.)

§ 106-266.4. Penalty for violation. — Any person, firm, association or corporation found guilty by a competent court of violating any of the provisions of this Article shall be guilty of a misdemeanor and upon plea of guilty or conviction shall be fined not to exceed fifty dollars ($50.00) for the first offense and for each subsequent offense shall be fined or imprisoned in the discretion of the court. (1949, c. 822.)

§ 106-266.5. Exemption clause. — The provisions of this Article shall not be construed as extending to or applying to evaporated milk, powdered whole milk, powdered skimmed milk, or cream used for manufacturing purposes. Out-of-state dairy farms producing milk for North Carolina plants under a permit from, and in accordance with the local health regulations of the county or city to which milk is being delivered, may be exempted from the provisions of this Article at the discretion of the Commissioner of Agriculture. (1949, c. 822.)

ARTICLE 28B.

Regulation of Production, Distribution, etc., of Milk and Cream.

§ 106-266.6. Definitions. — As used in this Article, unless otherwise stated and unless the context or subject matter clearly indicates otherwise:

(1) "Affiliate" means any person and/or subsidiary thereof, who has, either directly or indirectly, actual control or legal control over a distributor, whether by stock ownership or any other manner.

(2) "Books and records" means books, records, accounts, contracts, memoranda, documents, papers, correspondence, or other data, pertaining to the business of the person in question.

(3) "Commission" means the North Carolina Milk Commission created by this Article.

(4) "Distributor" or "subdistributor" means any of the following persons engaged in the business of distributing, marketing, or in any manner handling fluid milk, in whole or in part, in fluid form for consumption in the State of North Carolina, but shall not mean any distributor who sells 25 gallons or less of milk per day which is produced on his own farm:

a. Persons, irrespective of whether any such person is a producer:

1. Who pasteurize or bottle milk or process milk into fluid milk;
2. Who sell and/or market fluid milk at wholesale or retail:
   I. To hotels, restaurants, stores or other establishments for consumption on the premises,
   II. To stores or other establishments for resale, or
   III. To consumers;
3. Who operate stores or other establishments for the sale of fluid milk at retail for consumption off the premises.

b. Persons wherever located or operating, whether within or without the State of North Carolina, who purchase, market or handle milk for resale as fluid milk in the State.

(5) "Health authorities" includes the Department of Human Resources, the State Department of Agriculture, the Commissioner of Agriculture, and the local health authorities.
(6) "Licensee" means a licensed milk distributor.
(7) "Market" means any city, town, or village of the State, or any two or more cities and/or towns and/or villages and surrounding territory designated by the Commission as a natural marketing area.
(8) "Milk" means the clean lacteal secretion obtained by the complete milking of one or more healthy cows properly fed, housed, and kept; including milk that is produced under strict sanitary conditions, and cooled, pasteurized, standardized or otherwise processed with a view of selling it as fluid milk, cream, buttermilk (either cultured or natural buttermilk, and including cultured whole milk in its several forms) and skimmed milk. Said term excludes the lacteal secretions of one or more dairy cows where the secretion is to be sold for any other purpose.
(9) "Person" means any person, firm, corporation or association.
(10) "Producer" means any person, irrespective of whether such person is a member of a producer association or a distributor, who operates to produce milk for sale as fluid milk in the State.
(11) "Sanitary regulations" includes all laws and ordinances relating to the production, handling, transportation, distribution and sale of milk and, so far as applicable thereto, the State Sanitary Code and lawful regulations adopted by the dairy and food divisions, or by the board of health of any county or municipality.
(12) "Subdistributor" as distinguished from a "distributor" means one who does not process milk but purchases its milk from a licensed distributor for distribution.
(13) "Subsidiary" means any person or officer over whom or which a distributor or an affiliate of a distributor has, or several distributors have either directly or indirectly, actual or legal control, whether by stock ownership or in any other manner. (1953, c. 1338, s. 1; 1971, c. 779, s. 1; 1973, c. 476, s. 128.)

Editor's Note. — The 1973 amendment substituted "Department of Human Resources" for "State Board of Health" in subdivision (5).

Cases cited under the provisions of this Article were decided prior to the revision of this Article by Session Laws 1971, c. 779.

No Conflict with Federal Law. — There is no conflict between the North Carolina Milk Commission law and regulations and the federal procurement statute, nor is there conflict with the Capper-Volstead Act. Southeast Milk Sales Ass'n v. Swaringen, 290 F. Supp. 292 (M.D.N.C. 1968).

Regulations. — Control over the business of producing or dealing in milk and milk products is within the police power of the State, and reasonable regulation of the industry does not violate the constitutional right of equal protection. Southeast Milk Sales Ass'n v. Swaringen, 290 F. Supp. 292 (M.D.N.C. 1968).

Applied in State ex rel. North Carolina Milk Comm'n v. National Food Stores, 270 N.C. 323, 154 S.E.2d 548 (1967).

§ 106-266.7. Milk Commission continued; membership; chairman; compensation; quorum; cooperation of other agencies; official acts; meetings; principal office. — (a) There is hereby continued a milk commission, consisting of seven members, all of whom shall be appointed by the Governor, and one of whom shall be a Grade A producer whose primary interest is operating a dairy farm and one a distributor or employee of a distributor; the other five shall be public members and shall have no financial interest in, or be directly involved in, the production, processing, or distribution of milk or products derived therefrom. Of the Commission members appointed following the ratification of this Article, the Governor shall appoint one for a term of one year, two for a

term of two years, two for a term of three years, and two for a term of four years. Thereafter appointments of Commission members shall be made for a term of four years, ending on June 30 of the appropriate year; provided, however, that all members appointed pursuant to this section shall serve until their successors are appointed and qualified. In case of death or resignation of a member of the Commission prior to the expiration of his term of office, his successor shall be appointed by the Governor to fill out the unexpired term.

(b) At the first meeting of the Commission held after the effective date of this act, the Commission shall elect one of its public members as its chairman to serve through June 30 of the next following year. Thereafter, at its first meeting held on or after July 1 of each year, the Commission shall elect one of its public members to serve as chairman through June 30 of the next following year.

(c) The Commission is hereby authorized and empowered to employ an administrator and such other personnel, including but not limited to, the services of any agency or agencies, either inside or outside the State, as may be deemed necessary in assembling information on costs and other factors needed to carry out the provisions of this Article.

(d) The compensation for members of the Commission shall be set by the Governor with the approval of the Advisory Budget Commission. Members of the Commission shall also be reimbursed for actual and necessary expenses incurred in the performance of their duties.

(e) The compensation of the administrator shall be set according to law.

(f) All sums required for the operation of the Commission — salaries, per diem, and expenses — shall be paid out of special assessments collected from producers and distributors as set forth in G.S. 106-266.11.

(g) Four members of the Commission shall constitute a quorum.

(h) The Commission may call upon the Commissioner of Agriculture, the Director of Agricultural Research, the Director of the Agricultural Extension Service, or any other agency or department of the State for such information or services as such agency or department can provide, and such agency or department shall furnish such information or services, without compensation therefor, as in its opinion is practicable.

(i) The Commission shall, subject to the limitations herein contained and the rules and regulations of the Commission, enforce the provisions of this Article; but no official act shall be taken, rule or regulation be promulgated, or official order be made or enforced, with respect to the provisions of this Article without the due approval of the Commission.

(j) The Commission shall, by rule or otherwise, fix the time for holding regular meetings. The chairman, or any two members of the Commission, may at any time call a special meeting of the Commission. Such call shall designate the time and place of the meeting, and shall give not less than five days' written notice to each member by first-class mail to the address designated for said member on the records of the Commission. Notice of special meeting shall be signed by the person or persons calling the meeting and shall give a brief description of the business to be considered at said meeting. In addition, a special meeting of the Commission may be held at any time or place, either within or without the State, with the unanimous consent of all members of the Commission.

(k) The principal office of the Commission shall be in the City of Raleigh, North Carolina, in rooms assigned by the Department of Administration. (1953, c. 1338, s. 2; 1955, c. 406, ss. 2, 3; c. 1287, s. 1; 1965, c. 213; 1971, c. 779, s. 1.)

State Government Reorganization. — The Milk Commission was transferred to the Department of Commerce by § 143A-182, enacted by Session Laws 1971, c. 864.

The purpose of the act creating the Milk Commission was to protect the public interest in a sufficient, regularly flowing supply of wholesome milk and, to that end, to provide a fair price to the milk producer for his product. State ex rel. North Carolina Milk Comm'n v. National Food Stores, 270 N.C. 323, 154 S.E.2d 548 (1967).

§ 106-266.8. Powers of Commission. — The Commission is hereby declared to be an instrumentality of the State of North Carolina, vested with power:

(1) To confer with the legally constituted authorities of other states of the United States, with a view of securing a uniformity of milk control, with respect to milk coming into the State of North Carolina and going out of the said State in interstate commerce, with a view of accomplishing the purpose of this Article, and to enter into a compact or compacts for such uniform system of milk control.

(2) To investigate all matters pertaining to the production, processing, storage, distribution, and sale of milk for consumption in the State of North Carolina.

(3) To supervise and regulate the transportation, processing, storage, distribution, delivery and sale of milk for consumption; provided that nothing in this Article shall be interpreted as giving the Commission any power to limit the quantity of milk that any producer can produce, nor the power to prohibit or restrict the admission of new producers.

(4) To act as mediator or arbiter in any controversial issue that may arise among or between milk producers and distributors as between themselves, or that may arise between them as groups.

(5) To cause examination into the business, books, and accounts of any milk producer, association of producers or milk distributors, their affiliates or subsidiaries; to issue subpoenas to milk producers, associations of producers, and milk distributors, and require them to produce their records, books, and accounts; to subpoena any other person from whom information is desired.

(6) To take depositions of witnesses within or without the State. Any member of the Commission or any employee of the Commission, so designated, may administer oaths to witnesses and sign and issue subpoenas.

(7) To make, adopt, and enforce all rules, regulations and orders necessary to carry out the purposes of this Article. Every rule, regulation and order of the Commission shall be posted for inspection in the main office of the Commission. A certified copy of all general administrative rules and regulations or rules of practice and procedure shall be filed with the Secretary of State and with each clerk of the superior court as required by Chapter 150[A] of the General Statutes, and a certified copy thereof shall likewise be mailed in a sealed envelope, with postage prepaid, to all licensed distributors and associations of producers in the State. Such filing and mailing shall constitute due and sufficient notice to all persons affected by such rule, regulation or order. An order which applies only to a person or persons named therein shall be served on the person or persons affected. An order, herein required to be served, shall be served by personal delivery of a certified copy, or by mailing a certified copy in a sealed envelope, with postage prepaid, to each person affected thereby, or in the case of a corporation, to any officer or agent of the corporation upon whom legal process may be served.

(8) The operation and effect of any provision of this Article conferring a general power upon the Commission shall not be impaired or qualified by the granting to the Commission by this Article of a specific power or powers.

(9) The Commission shall not exercise its power in any market until a public hearing has been held for such market, and the Commission determines that it will be to the public interest that it shall so exercise its power in such market. The Commission may, on its own motion, call such a hearing, and shall call such a hearing upon the written application of a producers' association organized under the laws of the State,

supplying in the judgment of the Commission, a substantial proportion of the milk consumed in such market, but if no such producers' organization exists on said market, the Commission shall call such hearing upon the written application of producers supplying a substantial proportion of the milk consumed in said market; and shall call such hearing upon the written application of distributors, distributing a substantial proportion of the milk consumed in such market. Such hearing may be held at the time and place and after such notice as the Commission may determine.

The Commission may withdraw the exercise of its powers from any market after a public hearing has been held for such market, and the Commission determines that it will be to the public interest to withdraw the exercise of its powers from such market.

(10) a. The Commission, after investigation and public hearing, may fix prices to be paid producers and/or associations of producers by distributors in any market or markets, and may also fix different prices for different grades or classes of milk.

b. The Commission, after investigation and public hearing and finding as a fact that it is in the public interest, may fix the maximum and minimum wholesale and retail prices to be charged for milk in any market area by any person subject to this section and may fix different prices for different grades or classes of milk. The Commission may take into consideration the type of service rendered, the quantity delivered and the cost of the container.

c. Prices fixed under this subdivision (10) shall not become effective until 10 days after the mailing of notice of the action of the Commission. Prices fixed under b above shall remain in effect for at least 30 days and until the Commission finds it is in the public interest to remove said prices.

d. In determining the reasonableness of prices to be paid or charged in any market, the Commission shall be guided by the cost of production and distribution, including compliance with all sanitary regulations in force in such market or markets, necessary operating, processing, storage and delivery charges, the prices of other foods and other commodities, and the welfare of the general public.

e. In establishing producer prices for milk moving into other states, the Commission shall consider prevailing producer prices established by state or federal authority in such states.

(11) The Commission may require all distributors in any market designated by the Commission to be licensed by the Commission for the purpose of carrying out the provisions of this Article. One who purchases milk from a licensed distributor for the purpose of retail sales shall not be required to be licensed hereunder. The Commission may decline to grant a license, or may suspend or revoke a license already granted upon due notice and after a hearing, whenever said applicant or licensee shall have violated the regulations adopted by the Commission or failed to comply with the requirements of this Article 28B, or upon any of the following grounds:

a. Where the distributor has failed to account and make payment for any milk purchased or received on consignment or otherwise from a producer or association of producers, or has, if a subdistributor, failed to account and make payment for any milk purchased or received on consignment or otherwise from a distributor; provided, however, that it be shown there was reasonable cause for any such failure to account and make payment, and that such accounting and

payment can and will be made promptly, the Commission shall not suspend or revoke a license solely for such failure until a reasonable opportunity has been afforded to make such accounting and payment.

b. Where the applicant or distributor has made a general assignment for the benefit of creditors, or has been adjudged a bankrupt or there has been entered against him a judgment upon which an execution remains wholly or partly unsatisfied, or where it is shown that the applicant or distributor has insufficient financial responsibility, personnel or equipment properly to conduct the milk business.

c. Where the applicant or distributor has engaged in a course of action such as to satisfy the Commission of an intent on his part to deceive or defraud customers, producers or consumers.

d. Where the applicant or distributor has failed to maintain such records as are required by the rules and regulations of the Commission or has failed to furnish the statements or information required by the Commission under this Article 28B or has kept false records or furnished false statements with respect to such information.

e. Where the applicant or distributor has rejected, without reasonable cause, any milk purchased from a producer, or has refused to accept, without either reasonable cause or reasonable advance notice, milk delivered by or on behalf of a producer in ordinary continuance of a previous course of dealing, except when the contract has been lawfully terminated.

In any case where the Commission shall suspend a license, the Commission may, in its discretion, accept from the licensee an offer in compromise of not less than fifty dollars ($50.00) and not more than five thousand dollars ($5,000) as a penalty in lieu of such suspension, and thereupon rescind the suspension. All receipts from such penalties shall be paid by the Commission to the State Treasurer for disposition in the same manner as assessments, as provided by G.S. 106-266.12. The Commission may classify licenses, and may issue licenses to distributors to process or store or sell milk to a particular city or village or to a market or markets within the State of North Carolina.

(12) Any member of the Commission, or any person designated for the purpose, shall have access to, and may enter at all reasonable hours, all places where milk is processed, stored, bottled or manufactured into food products. Any member of the Commission or designated employee shall have the power to inspect and copy books and records in any place within the State for the purpose of ascertaining facts to enable the Commission to administer this Article. The Commission may combine such information for any market or markets and make it public.

(13) The Commission may define after a public hearing what shall constitute a natural-market area and define and fix limits of the milk shed or territorial area within which milk shall be produced to supply any such market area: Provided, that producers, producer-distributors or their successors now shipping milk to any market may continue to do so until they voluntarily discontinue shipping to the designated milk market.

(14) Each licensee shall from time to time, as required by the Commission, submit verified reports containing such information as the Commission may require. (1953, c. 1338, s. 3; 1955, c. 1287, s. 2; 1959, c. 1292; 1963, c. 797, ss. 1-3; 1965, c. 936, s. 1; 1971, c. 779, s. 1; 1973, c. 811; c. 1331, s. 3.)

Editor's Note.—The 1973 amendment inserted "maximum and" and "by any person subject to this section" in the first sentence and added the second sentence of subdivision (10)b.

Pursuant to Session Laws 1973, c. 1331, s. 3, effective July 1, 1975, the reference to Chapter 150[A] has been substituted for references to §§ 143-195 and 143-198.1 in subdivision (7).

Former Provisions Held Constitutional. — See State ex rel. North Carolina Milk Comm'n v. Galloway, 249 N.C. 658, 107 S.E.2d 631 (1959).

Regulation of Milk Prices.—The Commission was established as a State agency to protect the interest of the public in a regularly flowing supply of wholesome milk and is authorized, for that purpose, and that purpose only, to regulate, under proper circumstances and to a proper degree, the price of milk. State ex rel. North Carolina Milk Comm'n v. National Food Stores, Inc., 270 N.C. 323, 154 S.E.2d 548 (1967).

The Fourteenth Amendment to the Constitution of the United States does not forbid a state to confer upon an administrative agency the power to fix minimum and maximum retail prices to be charged for the sale of milk in grocery stores to consumers for the purpose of assuring the steady flow of an adequate supply of clean, wholesome milk from the producing farms to the consumer. State ex rel. North Carolina Milk Comm'n v. National Food Stores, Inc., 270 N.C. 323, 154 S.E.2d 548 (1967).

Regulation and Fixing of Transportation Rates. — See State ex rel. North Carolina Milk Comm'n v. Galloway, 249 N.C. 658, 107 S.E.2d 631 (1959).

An order of the Milk Commission pursuant to this section prescribing a uniform hauling charge per cwt. upon all producers delivering milk to a certain distributor, regardless of the distance or route, is not arbitrary or discriminatory and is relevant to the legislative purpose of the Milk Commission Act. It does not deny a producer the equal protection of the laws or deprive him of property without due process of law, even though he is subject under the regulation to a higher charge than he was under a former system, and does not violate former N.C. Const., Art. I, §§ 17 and 37 (see now Art. I, §§ 19 and 29), nor the Fourteenth Amendment to the federal Constitution. State ex rel. North Carolina Milk Comm'n v. Galloway, 249 N.C. 658, 107 S.E.2d 631 (1959).

Neither N.C. Const., Art. I, § 32, nor Art. I, § 19, forbids the legislature of this State to confer upon the Milk Commission authority to fix a uniform rate for the transportation of milk from the farm to the processing plant so as to enable the producers of milk to secure a fair price for their product. State ex rel. North Carolina Milk Comm'n v. National Food Stores, Inc., 270 N.C. 323, 154 S.E.2d 548 (1967).

Regulation of Competition among Retail Grocery Stores Not Intended. — The Milk Commission was not established as an agency to regulate competition among retail grocery stores per se. State ex rel. North Carolina Milk Comm'n v. National Food Stores, Inc., 270 N.C. 323, 154 S.E.2d 548 (1967).

Sections of Milk Marketing Order No. Two Held Constitutional. — Sections IV-A-1, IV-B-2, IV-C-1, IV-C-2, IV-E-1A, V-C-2, and V-C-4 of Milk Marketing Order No. Two of the North Carolina Milk Commission were held not to constitute a burden on interstate commerce, conflict with federal regulation of interstate commerce as provided in the Capper-Volstead Act, deny equal protection of the law and due process of law, or impair the obligations of contract. Southeast Milk Sales Ass'n v. Swaringen, 290 F. Supp. 292 (M.D.N.C. 1968).

§ 106-266.9. Distributors to be licensed; prices and practices of distributors regulated. — No distributor in a market in which the provisions of this Article are in effect shall buy milk from producers, or others, for sale within the State, or sell or distribute milk within the State, unless such distributor is duly licensed under the provisions of this Article. It shall be unlawful for a distributor to buy from or sell milk to a distributor who is not licensed as required by this Article. It shall be unlawful for any distributor to deal in, or handle milk if such distributor has reason to believe that the milk has been previously dealt in, or handled, in violation of the terms and provisions of this Article. No distributor shall violate the prices as established by or filed with the Commission or offer any discounts or rebates without authority from the Commission; and the Commission may prohibit such practices as it may deem to be contrary to the welfare of the public and the dairy industry, such as the use of special prices or special inducements in any form or any unfair trade practices in order to vary from the established prices. The Commission may require each distributor to file with the Commission one complete schedule of his wholesale and retail prices for each marketing area and may require each distributor to charge his posted prices for all sales and to give 10 days' notice by certified mail to the Commission and every licensed distributor in each marketing area affected prior to the

effective date of any changes in said posted prices. The requirements as to filing price schedules shall not apply to retail stores the principal business of which is selling other than dairy products and which do not maintain or control directly or indirectly a milk processing plant. The Commission may prohibit a distributor from selling or offering for sale milk in any market or county at prices less than the prices filed for the market or county in which such distributor's processing or bottling plant is located, except in such cases as such sales may be made at a lower price or prices in good faith to meet competition. (1953, c. 1338, s. 4; 1955, c. 406, s. 4; 1963, c. 797, ss. 2, 4, 4½; 1971, c. 779, s. 1.)

§ 106-266.10. Licenses for distributors and subdistributors. — An application to the Commission for a license to operate as a distributor or subdistributor shall be made by mail or otherwise within 30 days after the provisions of this Article become effective in a market, and as to any distributor or subdistributor thereafter beginning business, before such distributor or subdistributor shall begin such business therein. The application shall be made on blanks furnished by the Commission for that purpose. Each distributor shall cooperate with the Commission in seeing to it that its subdisbributors are informed concerning, and comply with, the provisions of this Article and the rules and regulations duly adopted by the Commission. (1953, c. 1338, s. 5; 1971, c. 779, s. 1.)

§ 106-266.11. Annual budget of Commission; collection of monthly assessments. — The Commission shall prepare an annual budget and shall collect the sums of money required for this budget from the distributors in the form of monthly assessments. The assessments so levied shall not exceed four cents (4¢) per 100 pounds of milk handled. One half of any such assessment shall be deducted from funds owed to a producer or any association of producers. (1953, c. 1338, s. 6; 1971, c. 779, s. 1.)

§ 106-266.12. Milk Commission Account; deductions by distributor from funds owed to producer. — All receipts from assessments collected under this Article shall be paid by the Commission to the State Treasurer and shall be placed by the State Treasurer in a general fund to the credit of an account to be known as the "Milk Commission Account" and such an amount as may be necessary, and no more, is hereby appropriated out of this Milk Commission Account, for the payment of all expenses incurred by the Commission in administering and enforcing this Article. The Commission shall require a distributor to make such deductions from funds owed to a producer as authorized by the producer. (1953, c. 1338, s. 7; 1971, c. 779, s. 1.)

§ 106-266.13. Injunctive relief. — In the event of violation of any provisions of this Article, or order promulgated under the provisions thereof, in addition to any other remedy, the Commission may apply to any court of record in the State of North Carolina for relief by injunction, if necessary, to protect the public interest without being compelled to allege or prove that any adequate remedy at law does not exist. (1953, c. 1338, s. 10; 1971, c. 779, s. 1.)

Applied in State ex rel. North Carolina Milk Comm'n v. National Food Stores, Inc., 270 N.C. 323, 154 S.E.2d 548 (1967).

§ 106-266.14. Penalties. — Any person violating any provisions of this Article, or order promulgated under the provisions thereof, or of any license issued by the Commission shall be guilty of a misdemeanor and may be prosecuted and punished therefor, and upon conviction, shall be punished by a fine of not less than twenty-five dollars ($25.00) and not more than one hundred dollars ($100.00), or by imprisonment in the county jail for not less than 30 days

nor more than one year, or by both fine and imprisonment, and each day during which such violation shall continue shall be deemed a separate violation. Prosecutions for violations of this Article shall be instituted by the Attorney General or otherwise, in any county or city of the State of North Carolina in which such violations occur. (1953, c. 1338, s. 11; 1971, c. 779, s. 1.)

§ 106-266.15. Appeals. — (a) Any person aggrieved by an order of the Commission revoking or suspending the license of a distributor or producer-distributor, or refusing to grant a license or to reissue a license or to transfer a license from one person to another, or by any action, rule, regulation, or order of the Commission applying only to a particular person (as distinguished from rules and regulations of general application), may have such order reviewed upon appeal to the superior court as provided in this subsection (a). Any such aggrieved person may within 40 days after the effective date of such action, rule, regulation, or order, appeal therefrom to the superior court. No such appeal shall act as a supersedeas except on a special order of the superior court allowing a supersedeas. Before the expiration of 40 days, such an aggrieved person shall file written notice of appeal with the Commission and within 10 days after receipt of said written notice of appeal, it shall be the duty of the Commission to certify a complete record of its proceedings with all papers or evidence to the clerk of the superior court of the county in which the appellant resides or to the clerk of the superior court of the county in which the violation occurred. The cause shall be entitled "State of North Carolina on Relation of the North Carolina Milk Commission v. (here insert name of appellant)," and said cause shall be placed on the civil docket of the superior court of said county and shall be heard de novo under the same rules and regulations as are prescribed for the trial of other civil causes. The Commission shall be deemed to be a party plaintiff on such appeal and at its request may present its contentions, make arguments, and take any other legal steps that a party to a civil action may take in the superior court, including the right to appeal to the Court of Appeals.

(b) The provisions of Chapter 150[A] of the General Statutes of North Carolina relating to "Judicial Review of Decisions of Certain Administrative Agencies" shall apply to appeals or petitions for judicial review by any person or persons aggrieved by an order of the Commission, fixing, revising or amending the price at or the terms upon which milk may be bought or sold, or by an order promulgating rules and regulations affecting the milk industry as a whole, or by any other order, action, rule, or regulation of the Commission of general application. In the event more than one person files a petition for judicial review of the same order, action, rule, or regulation, the cases shall be consolidated for hearing in the superior court. (1953, c. 1338, s. 12; 1969, c. 44, s. 67; 1971, c. 779, s. 1; 1973, c. 1331, s. 3.)

Editor's Note. — Pursuant to Session Laws 1973, c. 1331, s. 3, effective July 1, 1975, the reference to Chapter 150[A] has been substituted for a reference to Article 33 of Chapter 143 near the beginning of subsection (b).

Right of Appeal and Hearing De Novo. — A person aggrieved by a decision of the Commission in North Carolina has a right of appeal and to be heard de novo in the superior court. Southeast Milk Sales Ass'n v. Swaringen, 290 F. Supp. 292 (M.D.N.C. 1968).

A sedulous protection against abuse of power by the Milk Commission is provided in this section, which requires that when an appeal is taken from an order of the Milk Commission, the proceeding shall be heard de novo in the superior court. State ex rel. North Carolina Milk Comm'n v. Galloway, 249 N.C. 658, 107 S.E.2d 631 (1959).

§ 106-266.16. Saving clause. — No provisions of this Article shall apply or be construed to apply to foreign or interstate commerce, except insofar as the same may be effective pursuant to the United States Constitution and to the laws of the United States enacted pursuant thereto. (1953, c. 1338, s. 13; 1971, c. 779, s. 1.)

§ 106-266.17. Marketing agreements not to be deemed illegal or in restraint of trade; conflicting laws. — The making of marketing agreements between producers' cooperative marketing associations and distributors and producer-distributors under the provisions of this Article shall not be deemed a combination in restraint of trade or an illegal monopoly, or an attempt to lessen competition or fix prices arbitrarily nor shall the marketing contract or agreements between the association and the distributors and producer-distributors, or any agreements authorized in this Article, be considered illegal or in restraint of trade. All laws and clauses of laws in conflict with the provisions of this Article are hereby repealed to the extent necessary for the full operation of this Article. No provisions of this Article shall be deemed in conflict with Articles 28 and 28A of Chapter 106 of the General Statutes. No provisions of this Article shall be deemed in conflict with the authority granted to county, city-county and district boards of health by G.S. 130-19, 130-20, 130-66, to make and enforce rules and regulations governing milk sanitation or with the authority granted to the Department of Human Resources by G.S. 130-3 to make sanitary inquiries and investigations. (1953, c. 1338, s. 14; 1971, c. 779, s. 1; 1973, c. 476, s. 128.)

Editor's Note. — The 1973 amendment substituted "Department of Human Resources" for "State Board of Health."

The reference to G.S. 130-3 appears to be an error. A reference to § 130-11 may have been intended.

§ 106-266.18. Limitations upon power of Commission. — Nothing in this Article shall be interpreted as giving the Commission any power to limit the quantity of milk that any producer can produce, nor the power to prohibit or restrict the admission of new producers, nor the power to restrict the marketing area of any producer. (1953, c. 1338, s. 14½; 1971, c. 779, s. 1.)

§ 106-266.19. Sale below cost to injure or destroy competition prohibited. — The sale of milk by any distributor or producer-distributor or retailer below cost for the purpose of injuring, harassing or destroying competition is hereby prohibited; and the offering for sale of milk by a retailer at below-cost prices to induce the public to patronize his store, or what is commonly known in the trade as using milk as a "loss leader" is also hereby prohibited. At any hearing or trial on a complaint under this section, evidence of sale of milk by a distributor or subdistributor or retailer below cost shall constitute prima facie evidence of the violation or violations alleged, and the burden of rebutting the prima facie case thus made, by showing that the same was justified in that it was not, in fact, made below cost or that it was not for the purpose of injuring, harassing or destroying competition, or that it was not used as a "loss leader" or to induce the public to patronize his store, shall be upon the person charged with a violation of this section. As used herein the term "cost" shall be construed to mean the price paid for Grade A or Class I milk in the area where such sale is made plus a reasonable allocation of processing and marketing expenses. In determining whether any sale has been made in violation of this section, the Commission shall consider all discounts, rebates, gratuities or any other matters which may have the effect of either directly or indirectly reducing the price received by the distributor or producer-distributor or retailer involved. The prima facie case of a violation of this section, made by proof of sale below cost, may be rebutted by proof of any of the following facts:

(1) The merchandise was damaged, or

(2) The milk was sold upon the final liquidation of a business, or

(3) The milk was sold to an organized charity or to a relief agency, or

(4) The milk was sold by an officer acting under the direction of any court.

(1955, c. 406, s. 1; 1959, c. 1021; 1965, c. 936, s. 2; 1971, c. 779, s. 1.)

Editor's Note. — For comment on this section, particularly as to its constitutionality, see 33 N.C.L. Rev. 524 (1955).

Constitutionality. — The provisions of this section making proof of the sale of milk by a retailer below cost prima facie evidence of a purpose to injure, harass or destroy competition in the marketing of milk, is not beyond the constitutional power of the legislature. State ex rel. North Carolina Milk Comm'n v. National Food Stores, Inc., 270 N.C. 323, 154 S.E.2d 548 (1967).

§§ 106-266.20, 106-266.21: Repealed by Session Laws 1971, c. 779, s. 1.

ARTICLE 29.

Inspection, Grading and Testing Milk and Dairy Products.

§ 106-267. Inspection, grading and testing dairy products. — The State Board of Agriculture shall have full power to make and promulgate rules and regulations for the Department of Agriculture in its inspection and control of the purchase and sale of milk and other dairy products in North Carolina; to make and establish definitions, not inconsistent with the laws pertaining thereto; to qualify and determine the grade and contents of milk and of other dairy products sold in this State; to regulate the manner of testing the same and the handling, treatment and sale of milk and dairy products, and to promulgate such other rules and regulations not inconsistent with the law as may be necessary in connection with the authority hereby given to the Commissioner of Agriculture on this subject. (1933, c. 550, ss. 1-3; 1951, c. 1121, s. 1.)

§ 106-267.1. License required; fee; term of license; examination required. — Every person who shall test milk or cream in this State by, or sample milk for, the Babcock method or otherwise for the purpose of determining the percentage of butterfat or milk fat contained therein, where such milk or cream is bought and paid for on the basis of the amount of butterfat contained therein, shall first obtain a license from the Commissioner of Agriculture. Any person applying for such license or renewal of license shall make written and signed application on blanks to be furnished by the Commissioner of Agriculture. The granting of a license shall be conditioned upon the passing by the applicant of an examination, to be conducted by or under the direction of the Commissioner of Agriculture. All licenses so issued or renewed shall expire on December 31 of each year, unless sooner revoked, as provided in G.S. 106-267.3. A license fee of two dollars ($2.00) for each license so granted or renewed shall be paid to the Commissioner of Agriculture by the applicant before any license is granted. (1951, c. 1121, s. 1; 1959, c. 707, s. 5.)

§ 106-267.2. Rules and regulations. — The Commissioner of Agriculture shall establish and promulgate rules and regulations not inconsistent with this Article that shall govern the granting of licenses under this Article and shall establish and promulgate rules and regulations not inconsistent with this Article that shall govern the manner of testing, including, but not in limitation thereof, the taking of samples, location where the testing of said samples shall be made and the length of time samples of milk or cream shall be held after testing. (1951, c. 1121, s. 1.)

§ 106-267.3. Revocation of license; hearing. — The Commissioner of Agriculture shall have power to revoke any license granted under the provisions of this Article, upon good and sufficient evidence that the provisions of this Article or the rules and regulations of the Commissioner of Agriculture are not being complied with: Provided, that before any license shall be revoked, an opportunity shall be granted the licensee, upon being confronted with the

evidence, to show cause why such license should not be revoked. (1951, c. 1121, s. 1.)

§ 106-267.4. Representative average sample; misdemeanor, what deemed. — In taking samples of milk or cream from any milk can, cream can or any container of milk or cream, the contents of such milk can, cream can, or container of milk and cream shall first be thoroughly mixed either by stirring or otherwise, and the sample shall be taken immediately after mixing or by any other method which gives a representative average sample of the contents, and it is hereby made a misdemeanor to take samples by any method or to fraudulently manipulate such samples so as not to give an accurate and representative average sample where milk or cream is bought or sold and where the value of said milk or cream is determined by the butterfat contained therein. (1951, c. 1121, s. 1.)

§ 106-267.5. Standard Babcock testing glassware; scales and weights. — In the use of the Babcock test all persons shall use the "standard Babcock testing glassware, scales, and weights." The term "standard Babcock testing glassware, scales and weights" shall apply to glassware, scales and weights. It shall be unlawful for any person, firm, company, association, corporation or agent thereof to falsely manipulate, underread or overread the Babcock test or any other contrivance used for determining the quality of value of milk or cream where the value of said milk or cream is determined by the percentage of butterfat contained in the same or to make a false determination by the Babcock test or otherwise, or to falsify the record of such test or to pay on the basis of any test, measurement or weight except the true test, measurement or weight. (1951, c. 1121, s. 1.)

§ 106-268. Definitions; enforcement of Article. — The definitions set forth in this section shall apply to milk, dairy products, ice cream, frozen desserts, frozen confections or any other products which purport to be milk, dairy products or frozen desserts for which a definition and standard of identity has been established and when any of such products heretofore enumerated shall be sold, offered for sale or held with intent to sell by a milk producer, manufacturer or distributor, and insofar as practicable and applicable, the definitions contained in Article 12 of Chapter 106 of the General Statutes, as amended, shall be effective as to the products enumerated in this Article and section.

The term "adulteration" means:

(1) Failure to meet definitions and standards as established by the Board of Agriculture.
(2) If any valuable constituent has been in whole or in part omitted or abstracted therefrom.
(3) If any substance has been substituted wholly or in part thereof.
(4) If it is adjudged to be unfit for human consumption.

The term "misbranded" means:

(1) If its labeling is false or misleading in any particular.
(2) If it is offered for sale under the name of another dairy product or frozen dessert.
(3) If it is sold in package form unless it bears a prominent label containing the name of the defined product, name and address of the producer, processor or distributor and carries an accurate statement of the quantity of contents in terms of weight or measure.

The Department of Agriculture, through its agents or inspectors, shall have free access during business hours to all places of business, buildings, vehicles, cars, storage places, containers and vessels used in the production, testing, processing and distribution of milk, cream, butter, cheese, ice cream, frozen dessert or any dairy product for which standards of purity and of identity have

been established, as well as any substance which purports to be milk, dairy products, frozen dessert or confection for which a definition and standard of purity has been established; the Department of Agriculture, acting through its duly authorized agents and inspectors, may open any box, carton, parcel, package or container holding or containing, or supposed to hold or contain any of the above-enumerated dairy products, as well as related products, and may take therefrom samples for analysis, test or inspection. If it appears that any of the provisions of this Article or of this section have been violated, or whenever a duly authorized agent of the Department of Agriculture has cause to believe that any milk, cream, butter, cheese, ice cream, frozen dessert or any dairy product for which standards of purity and of identity have been established or any substance which purports to be milk, a dairy product or a frozen dessert for which a definition and standard of identity has been established, is adulterated or misbranded or by reason of contamination with microorganisms has become deleterious to health during production, processing or distribution, and such products, or any of them, are in a stage of production, or are being exposed for sale, or are being held for processing or distribution or such products are being held with intent to sell the same, such agent or inspector is hereby authorized to issue a "stop-sale" order which shall prohibit further sale of any of the products above enumerated or which shall prohibit further processing, production or distribution of any of the products above enumerated. The agent or inspector shall affix to such product a tag or other appropriate marking giving notice that such product is, or is suspected of, being adulterated, misbranded or contaminated and that the same has been detained or embargoed, and warning all persons not to remove or dispose of such product, by sale or otherwise, until permission for removal or disposal is given by such agent or inspector, until the law or regulation has been complied with or said violation has otherwise been legally disposed of. It shall be unlawful for any person to remove or dispose of any embargoed product, by sale or otherwise, without such permission: Provided, that if such adulteration or misbranding can be corrected by proper labeling or processing of the products so that the products meet the definitions and standards of purity and identity, then with the approval of such agent or inspector, sale and removal may be made. Any milk, dairy products or any of the products enumerated in this Article or section not in compliance with this Article or section shall be subject to seizure upon complaint of the Commissioner of Agriculture, or any of the agents or inspectors of the Department of Agriculture, to a court of competent jurisdiction in the area in which said products are located. In the event the court finds said products, or any of them, to be in violation of this Article or of this section, the court may order the condemnation of said products, and the same shall be disposed of in any manner consistent with the rules and regulations of the Board of Agriculture and the laws of the State and in such a manner as to minimize any loss or damage as far as possible: Provided, that in no instance shall the disposition of said products be ordered by the court without first giving the claimant or owner of same an opportunity to apply to the court for the release of said products or for permission to again process or relabel the same so as to bring the product in compliance with this Article or section. In the event any "stop-sale" order shall be issued under the provisions of this Article or section, the agents, inspectors or representatives of the Department of Agriculture shall release the products, or any of them, so withdrawn from sale when the requirements of the provisions of this Article and section have been complied with and upon payment of all costs and expenses incurred in connection with the withdrawal. (1951, c. 1121, s. 1.)

§ 106-268.1. Penalties. — Any person, firm or corporation violating any of the provisions of this Article, or any of the rules, regulations or standards

promulgated hereunder, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than one hundred dollars ($100.00) and the cost of prosecution, or by imprisonment in the county jail for a period of not more than two months, or both such fine and imprisonment in the discretion of the court. (1951, c. 1121, s. 1.)

ARTICLE 30.

Board of Crop Seed Improvement.

§ 106-269. Creation and purpose. — There is hereby created a Board of Crop Seed Improvement. It shall be the duty and function of this Board, in cooperation with the Agricultural Experiment Station of North Carolina State College of Agriculture and Engineering, and the Seed Testing Division of the North Carolina Department of Agriculture, to foster and promote the development and distribution of pure strains of crop seeds among the farmers of North Carolina. (1929, c. 325, s. 1; 1955, c. 330, s. 1.)

Cross Reference. — For designation of North Carolina State College of Agriculture and Engineering as North Carolina State University at Raleigh, see § 116-2.

§ 106-270. Board membership. — The Board of Crop Seed Improvement shall consist of the Commissioner of Agriculture, the Dean of the School of Agriculture, President of the North Carolina Foundation Seed Producers Incorporated, and the Director of Research of the School of Agriculture of North Carolina State College of Agriculture and Engineering, the Head of the Seed Testing Division of the North Carolina Department of Agriculture, and the President of the North Carolina Crop Improvement Association. (1929, c. 325, s. 2; 1955, c. 330, s. 2.)

Cross Reference. — For designation of North Carolina State College of Agriculture and Engineering as North Carolina State University at Raleigh, see § 116-2.

§ 106-271. Powers of Board. — The said Board shall have control, management and supervision of the production, distribution and certification of purebred crop seeds under the provisions of this Article. (1929, c. 325, s. 3.)

§ 106-272. Cooperation of other departments with Board; rules and regulations; fees for certification. — Insofar as any of the State departments or agencies shall have to do with the testing, development, production, certification and distribution of farm crop seeds, such departments or agencies shall actively cooperate with the said Board in carrying out the purposes of this Article. The said Board shall have authority to make, establish and promulgate all needful rules and regulations, including rules and regulations fixing fees for certification and fixing the market price of certified seed, necessary for the proper exercise of the duties conferred upon said Board and for the carrying out the full purposes of this Article. (1929, c. 325, s. 4.)

§ 106-273. North Carolina Crop Improvement Association. — For the purpose of carrying out more fully the provisions of this Article and of fostering the development, certification and distribution of pure seeds the said Board shall have authority to promote the organization and incorporation of an association of farmers to be known as the North Carolina Crop Improvement Association, which said Association when so organized and incorporated shall, subject to the rules and regulations prescribed by said Board, adopt all necessary rules and

regulations and collect from their members such fees as shall be necessary for the proper functioning of such organizations. (1929, c. 325, s. 5.)

State Government Reorganization. — The Board of Crop Seed Improvement was transferred to the Department of Agriculture by § 143A-64, enacted by Session Laws 1971, c. 864.

§ 106-274. Certification of crop seeds. — For the purposes of this Article the certification of crop seeds hereunder shall be defined to be a guarantee by the North Carolina Crop Improvement Association herein provided for that the said seed conform to the stated origin, adaptation, variety name, variety purity, quality, germination, seed purity, and any other qualification necessary for the determining of the proper quality or value of crop seed. (1929, c. 325, s. 6.)

§ 106-275. False certification of purebred crop seeds made misdemeanor. — It shall be a misdemeanor, punishable by fine or imprisonment in the discretion of the court, for any person, firm, association, or corporation, selling seeds, tubers, plants, or plant parts in North Carolina, to use any evidence of certification, such as a blue tag or the word "certified" or both, on any package of seed, tubers, plants, or plant parts, nor shall the word "certified" be used in any advertisement of seeds, tubers, plants, or plant parts, unless such commodities used for plant propagation shall have been duly inspected and certified by the agency of certification provided for in this Article, or by a similar legally constituted agency of another state or foreign country. (1933, c. 340, s. 1.)

§ 106-276. Supervision of certification of crop seeds. — Certification of crop seeds shall be subject to the supervision of the Board of Crop Seed Improvement. The North Carolina Crop Improvement Association is recognized as the official agency for seed certification. (1929, c. 325, s. 7; 1955, c. 330, s. 3.)

ARTICLE 31.

North Carolina Seed Law.

§ 106-277. Purpose. — The purpose of this Article is to regulate the labeling, possessing for sale, sale and offering or exposing for sale of agricultural seeds, vegetable seeds and screenings; to prevent misrepresentation thereof; and for other purposes. (1963, c. 1182.)

Protective Purpose of Article. — This Article has declared the policy of North Carolina to be one of protecting the farmer from the disastrous consequences of planting seed of one kind, believing he is planting another and from the consequences of the sale and delivery to farmers of seed falsely labeled. Gore v. George J. Ball, Inc., 279 N.C. 192, 182 S.E.2d 389 (1971).

This Article is not limited in its purpose or scope to the protection of the purchaser from fraud by the immediate vendor. Gore v. George J. Ball, Inc., 279 N.C. 192, 182 S.E.2d 389 (1971).

This Article is not a safety statute, therefore evidence of a violation of it is not necessarily evidence of negligence. Gore v. George J. Ball, Inc., 279 N.C. 192, 182 S.E.2d 389 (1971).

Applied in Gore v. George J. Ball, Inc., 10 N.C. App. 310, 178 S.E.2d 237 (1971).

§ 106-277.1. Short title. — This Article shall be known by the short title of "The North Carolina Seed Law of 1963." (1941, c. 114, s. 1; 1945, c. 828; 1949, c. 725; 1963, c. 1182.)

§ 106-277.2. Definitions. — As used in this Article, unless the context clearly requires otherwise:

(1) The term "advertisement" means all representations, other than those required on the label, disseminated in any manner or by any means, relating to seed within the scope of this Article.
(2) The term "agricultural seeds" shall include the seed of grass, forage, cereal, fiber crops and any other kinds of seeds commonly recognized within this State as agricultural or field seeds, lawn seeds and mixtures of such seeds, and may include noxious-weed seeds when the Commissioner determines that such seed is being used as agricultural seed.
(3) The term "Board" means the North Carolina Board of Agriculture as established under G.S. 106-2.
(4) The terms "certified seeds," "registered seeds" or "foundation seeds" mean seed that has been produced and labeled in accordance with the procedures and in compliance with the requirements of an official seed-certifying agency.
(5) The term "clone" means all the individuals derived by vegetative propagation from a single, original individual.
(6) The term "code designation" means a series of numbers or letters approved by the United States Department of Agriculture and used in lieu of the full name and address of the person who labels seeds, as required in this Article in G.S. 106-277.5(10).
(7) The term "Commissioner" means the Commissioner of Agriculture of North Carolina or his designated agent or agents.
(8) The term "date of test" means the month and year the percentage of germination appearing on the label was obtained by laboratory test.
(9) The term "dealer" or "vendor" shall mean any person, not classified as a grower, who buys, sells or offers for sale any seed for seeding purposes and shall include any person who has seed grown under contract for resale for seeding purposes.
(10) The term "germination" means the percentages by count of seeds under consideration, determined to be capable of producing normal seedlings in a given period of time and under normal conditions.
(11) The term "grower" shall mean any person who produces seed, directly as a landlord, tenant, sharecropper or lessee, which are offered or exposed for sale.
(12) The term "hard seeds" means seeds which, because of hardness or impermeability, do not absorb moisture and germinate but remain hard during the normal period of germination.
(13) The term "hybrid" means the first generation seed of a cross produced by controlling cross-fertilization and combining (i) two or more inbred lines or clones, or (ii) one or more inbred lines or clones with an open-pollinated variety, or (iii) two or more varieties or species, clonal or otherwise, except open-pollinated varieties of normally cross-fertilized species. The second-generation or subsequent-generation seed from such crosses shall not be designated as hybrids. Hybrid designations shall be treated as variety names.
(14) The term "inbred line" means a relatively stable and pure breeding strain resulting from not less than four successive generations of controlled self-pollination or four successive generations of backcrossing in the case of male sterile lines or their genetic equivalent.
(15) The term "in bulk" refers to loose seed in bins, or open containers, and not to seed in bags or packets.
(16) The term "inert matter" means all matter not seeds, including broken seeds, sterile florets, chaff, fungus bodies, stones and other substances found not to be seed when examined according to procedures prescribed

by rules and regulations promulgated pursuant to the provisions of this Article.

(17) The term "kind" means one or more related species or subspecies which singly or collectively is known by one common name, for example, corn, wheat, striate lespedeza, alfalfa, tall fescue.

(18) The term "labeling" includes all labels and other written, printed or graphic representations in any manner whatsoever accompanying and pertaining to any seed whether in bulk or in containers and includes representations on invoices.

(19) The term "lot" means a definite quantity of seed, identified by a lot number or other identification, which shall be uniform throughout for the factors which appear on the label.

(20) The term "mixture" means seeds consisting of more than one kind or kind and variety, each present in excess of five per centum (5%) of the whole.

(21) The term "North Carolina seed analysis tag" shall mean the tag designed and prescribed by the Commissioner as the official North Carolina seed analysis tag, said tag to be purchased from the Commissioner.

(22) "Noxious-weed seeds" shall be divided into two classes:

a. "Prohibited noxious-weed seeds" are the seeds of weeds which, when established on the land, are highly destructive and are not controlled in this State by cultural practices commonly used, and shall include any crop seed found to be harmful when fed to poultry or livestock.

b. "Restricted noxious-weed seeds" are the seeds of weeds which are very objectionable in fields, lawns and gardens in this State and are difficult to control by cultural practices commonly used.

(23) The term "official certifying agency" means

a. An agency authorized under the laws of a state, territory, or possession to officially certify seed which has standards and procedures approved by the U.S. Secretary of Agriculture to assure the genetic purity and identity of the seed certified, or

b. An agency of a foreign country determined by the U.S. Secretary of Agriculture to adhere to procedures and standards for seed certification comparable to those adhered to generally by seed certifying agencies under a.

(24) The term "origin" means the state, District of Columbia, Puerto Rico, possession of the United States or the foreign country where the seed was grown.

(25) The term "other crop seeds" means seeds of kinds or varieties of agricultural or vegetable crops other than those shown on the label as the primary kind or kind and variety.

(26) The term "person" shall include any individual, partnership, corporation, company, society or association.

(27) The term "processing" means cleaning, scarifying or blending to obtain uniform quality and other operations which would change the purity or germination of the seed and therefore require retesting to determine the quality of the seed, but does not include operations such as packaging, labeling, blending together of uniform lots of the same kind or kind and variety without cleaning, or preparation of a mixture without cleaning, any of which would not require retesting to determine the quality of the seed.

(28) The term "pure seed" means agricultural or vegetable seeds, exclusive of inert matter, weed seeds and all other seeds distinguishable from the kind or kind and variety being considered when examined according

to procedures prescribed by rules and regulations promulgated pursuant to the provisions of this Article.

(29) The term "purity" means the name or names of the kind, type or variety and the percentage or percentages thereof, the percentage of other crop seed; the percentage of weed seeds, including noxious-weed seeds; the percentage of inert matter; and the name and rate of occurrence of each noxious-weed seed.

(30) The terms "recognized variety name" and "recognized hybrid designation" mean the name or designation which was first assigned the variety or hybrid by the person who developed it or the person who first introduced it for production or sale after legal acquisition. Such terms shall be used only to designate the varieties or hybrids to which they were first assigned.

(31) The term "screenings" includes seed, inert matter and other materials removed from agricultural or vegetable seed by cleaning or processing.

(32) The term "seed offered for sale" means any seed or grain, whether in bags, packets, bins or other containers, exposed in salesrooms, storerooms, warehouses or other places where seed is sold or delivered for seeding purposes, and shall be subject to the provisions of the seed law, unless clearly labeled "not for sale as seed."

(33) The term "seizure" means a legal process carried out by court order against a definite amount of seed.

(34) The term "stop-sale" means an administrative order provided by law restraining the sale, use, disposition and movement of a definite amount of seed.

(35) The term "treated" means given an application of a substance or subjected to a process designed to reduce, control or repel disease organisms, insects or other pests which attack seeds or seedlings growing therefrom, or to improve the planting value of the seed.

(36) The term "variety" means a subdivision of a kind characterized by growth, plant, fruit, seed or other constant characteristics by which it can be differentiated in successive generations from other sorts of the same kind; for example, Knox Wheat, Kobe Striate Lespedeza, Ranger Alfalfa, Kentucky 31 Tall Fescue.

(37) The term "vegetable seeds" shall include the seeds of those crops which are grown in gardens or on truck farms and are generally known and sold under the name of vegetable seed in this State.

(38) The term "weed seeds" means the seeds, bulblets or tubers of all plants generally recognized as weeds within this State or which may be classified as weed seed by regulations promulgated under this Article.

(39) The term "wholesaler" shall mean a dealer engaged in the business of selling seed to retailers or jobbers as well as to consumers.

(40) "Blend"—A mechanical combination of varieties identified by a blend designation in which each component variety is equal to or above the minimum standard germination for its class; which is always present in the same percentage in each lot identified by the same "blend" designation; and for which research data supports an advantage of the "blend" over the singular use of either component variety. "Blend" designations shall be treated as variety names.

(41) "Brand"—An identifying numeral, letter, word, or any combination of these, used with the word "brand" to designate source of seeds. (1941, c. 114, s. 3; 1943, c. 203, s. 1; 1945, c. 828; 1949, c. 725; 1953, c. 856, ss. 1-3; 1963, c. 1182; 1971, c. 637, s. 1.)

Quoted in Gore v. George J. Ball, Inc., 279 N.C. 192, 182 S.E.2d 389 (1971).

§ 106-277.3. Label or tag requirements generally. — Each container of agricultural and vegetable seeds which is sold, offered or exposed for sale, or transported within or into this State for seeding purposes shall bear thereon or have attached thereto in a conspicuous place a plainly written or printed label or tag in the English language giving the information required under G.S. 106-277.4 through 106-277.7, which information shall not be modified or denied in the labeling or on another label attached to the container. (1941, c. 114, s. 4; 1943, c. 203, s. 2; 1945, c. 828; 1949, c. 725; 1959, c. 585, s. 1; 1963, c. 1182.)

Indictment for Sale of Improperly Labeled Seed. — See same catchline under § 106-277.9.

Stated in Gore v. George J. Ball, Inc., 279 N.C. 192, 182 S.E.2d 389 (1971).

§ 106-277.4. Labels for treated seeds; coloring of seeds treated with poisonous substance. — (a) All seeds which are treated, as defined in this Article, shall be labeled to show the following information on a separate label, or on the same label as used for other information (purity, germination, etc.) required by this Article, or on the container of seed.

(1) A word or statement in type no smaller than eight points indicating that the seed has been treated.

(2) The commonly accepted coined, chemical (generic) or abbreviated chemical name of a substance or a description of any process (other than application of a substance) used in such treatment in type no smaller than eight points.

(3) A caution statement if the substance used in such treatment in the amount remaining with the seed is harmful to humans or other vertebrate animals.

(4) All seeds treated with a poisonous substance, if the amount remaining with the seed is in excess of a tolerance recognized by the U.S. Department of Agriculture, or treatment for which no tolerance or exemption from tolerance is recognized by the U.S. Department of Agriculture, shall be conspicuously colored to prevent their subsequent inadvertent use for purposes other than for seeding.

(b) Seed treated with a mercurial or similarly toxic substance, if any amount remains with the seed, shall be labeled to show a statement such as "Poison," "Poison Treated," or "Treated with Poison." The word "Poison" shall be in type no smaller than eight points and shall be in red letters on a distinctly contrasting background. In addition, the label shall show a representation of a skull and crossbones at least twice the size of the type used for the word "Poison" and the statement indicating that the seed has been treated.

(c) Seed treated with other harmful substances (other than mercurials or similarly toxic substances), if the amount remaining with the seed is harmful to humans or other vertebrate animals, shall be labeled to show the word "Caution" in red letters in type no smaller than eight points, followed by the statement "Do not use for food, feed, or oil" in type no smaller than eight points. Seed treated with substances other than mercurials or similarly toxic substance in containers of four ounces or less need not be labeled to show the caution statement.

(d) Seed commingled with treated seed shall be labeled "Treated," and the percentage of treated seed and the substance used shall be stated.

(e) If the seed is treated with an inoculant, the date beyond which the inoculant is not to be considered effective (date of expiration) shall be declared on the label. (1963, c. 1182; 1971, c. 637, s. 2.)

§ 106-277.5. Labels for agricultural seeds. — Agricultural seeds sold, offered or exposed for sale, or transported for sale within this State shall be labeled to show the following information:

(1) The commonly accepted name of the kind and the variety, or kind and the phrase "variety not stated" for each agricultural seed component, in excess of five percent (5%) of the whole, and the percentage by weight of each in order of its predominance. When more than one component is required to be named, the word "mixture" or the word "mixed" shall be shown conspicuously on the label. Second generation from hybrid seeds, if sold, shall be labeled "second generation (of the parent), variety not stated." "F" designations on lablels, unless used as a part of a variety name, will refer only to size and shape of corn seeds.

(2) Lot number or other lot identification.

(3) Net weight.

(4) Origin, if known. If the origin is unknown, the fact shall be stated.

(5) Percentage by weight of inert matter.

(6) Percentage by weight of agricultural seeds and/or vegetable seeds (which shall be designated as "other crop seeds") other than those named on the label. Different varieties of the same kind of seed, when in quantities of less than five percent (5%) will be considered as other crop seed.

(7) Percentage by weight of all weed seeds, including noxious-weed seeds.

(8) For each named agricultural seed:

a. Percentage of germination, exclusive of hard seed.

b. Percentage of hard seeds, if present.

c. The calendar month and year the test was completed to determine such percentages.

In addition to the individual percentage statement of germination and hard seed, the total percentage of germination and hard seed may be stated as such, if desired.

(9) The name and number per pound of each kind of restricted noxious-weed seed present.

(10) Name and address of person who labeled said seed or who sells, offers or exposes said seed for sale within this State. If the seeds are labeled by the shipper for a consignee within this State, the shipper may use his approved code designation with the name and address of the consignee. (1941, c. 114, s. 4; 1943, c. 203, s. 2; 1945, c. 828; 1949, c. 725; 1959, c. 585, s. 1; 1963, c. 1182; 1971, c. 637, s. 3.)

§ 106-277.6. Labels for vegetable seeds in containers of one pound or less. — Labels for vegetable seeds in containers of one pound or less shall show the following information:

(1) Name of kind and variety of seed.

(2) Origin, for pepper seed in containers of one ounce or more. If unknown, so stated.

(3) The year for which the seed is packed, provided the words "packed for" shall precede the year, or the percentage of germination, month and year tested.

(4) For seeds which germinate less than the standards last established by the Commissioner and approved by the Board of Agriculture under the Article:

a. Percentage of germination, exclusive of hard seed.

b. Percentage of hard seed, if present.

c. The calendar month and year the test was completed to determine such percentage.

In addition to the individual percentage statement of germination and hard seed, the total percentage of germination and hard seed may be stated as such, if desired.

d. The words "Below Standard" in not less than eight-point type.

(5) Name and address of person who labeled said seed or who sells, offers or exposes said seed for sale within this State. If the seeds are labeled by the shipper for a consignee within this State, the shipper may use his approved code designation with the name and address of the consignee. (1941, c. 114, s. 4; 1943, c. 203, s. 2; 1945, c. 828; 1949, c. 725; 1959, c. 585, s. 1; 1963, c. 1182; 1971, c. 637, s. 4.)

Cited in Gore v. George J. Ball, Inc., 279 N.C. 192, 182 S.E.2d 389 (1971).

§ 106-277.7. Labels for vegetable seeds in containers of more than one pound. — Vegetable seeds in containers of more than one pound shall be labeled to show the following information:

(1) The name of each kind and variety present in excess of five percent (5%) and the percentage by weight of each in order of its predominance.
(2) Lot number or other lot identification.
(3) Origin, for snap bean and pepper seed only. If unknown, so stated.
(4) For each named vegetable seed:
   a. The percentage of germination exclusive of hard seed.
   b. The percentage of hard seed, if present.
   c. The calendar month and year the test was completed to determine such percentages.

   In addition to the individual percentage statement of germination and hard seed, the total percentage of germination and hard seed may be stated as such, if desired.
(5) Net weight, except when in bulk as defined in this Article.
(6) Name and address of person who labeled said seed or who sells, offers or exposes said seed for sale within this State. If the seeds are labeled by the shipper for a consignee within this State, the shipper may use his approved code designation with the name and address of the consignee.
(7) No tag or label shall be required, unless requested, on seeds sold directly to and in the presence of the purchaser and taken from a bag or container properly labeled. (1941, c. 114, s. 4; 1943, c. 203, s. 2; 1945, c. 828; 1949, c. 725; 1959, c. 585, s. 1; 1963, c. 1182; 1971, c. 637, s. 5.)

§ 106-277.8. Responsibility for presence of labels. — (a) The immediate vendor of any lot of seed which is sold, offered or exposed for sale shall be responsible for the presence of the labels required to be attached to any lots of seed whether he is offering for sale or selling seed which bears labels of a previous vendor, with or without endorsement, or bears his own label.

(b) The labeler of any original or unbroken lot of seed shall be responsible for the presence of and the information on all labels attached to said lot of seed at the time he sells or offers for sale such lot of seed. (1963, c. 1182.)

Stated in Gore v. George J. Ball, Inc., 279 N.C. 192, 182 S.E.2d 389 (1971).

§ 106-277.9. Prohibitions. — It shall be unlawful for any person:

(1) To transport, to offer for transportation, to sell, offer for sale or expose for sale within this State agricultural or vegetable seeds for seeding purposes:
   a. Unless a seed license has been obtained in accordance with the provisions of this Article.
   b. Unless the test to determine the percentage of germination required by G.S. 106-277.5 through 106-277.7 shall have been completed

within a nine-month period, exclusive of the calendar month in which the test was completed, immediately prior to sale, exposure for sale, or offering for sale or transportation; provided, the North Carolina Board of Agriculture may adopt after a public hearing, following public notice, rules and regulations to designate a longer period for any kind of agricultural or vegetable seed which is packaged in such container materials (hermetically sealed), and under such other conditions prescribed, that will, during such longer period, maintain the viability of said seed under ordinary conditions of handling.

c. Not labeled in accordance with the provisions of this Article or having a false or misleading labeling or claim.

d. Pertaining to which there has been a false or misleading advertisement.

e. Consisting of or containing prohibited noxious-weed seeds.

f. Containing restricted noxious-weed seeds, except as prescribed by rules and regulations promulgated under this Article.

g. Containing weed seeds in excess of two percent (2%) by weight unless otherwise provided in rules and regulations promulgated under this Article.

h. That have been treated and not labeled as required in this Article, or treated and not conspicuously colored.

i. Pepper seed in containers holding one ounce or more of seed, not produced in the arid regions of the western United States, unless treated in accordance with a procedure approved by the North Carolina Commissioner of Agriculture and labeled to reflect the procedure used.

j. To which there is affixed names or terms that create a misleading impression as to the kind, kind and variety, history, productivity, quality or origin of the seeds.

k. Represented to be certified, registered or foundation seed unless it has been produced, processed and labeled in accordance with the procedures and in compliance with rules and regulations of an officially recognized certifying agency.

l. Represented to be a hybrid unless such seed conforms to the definition of a hybrid as defined in this Article.

m. Unless it conforms to the definition of a "lot."

n. Any variety, hybrid or blend of seeds not recorded with the Commissioner as required under rules and regulations promulgated pursuant to this Article.

o. Seed of any variety or hybrid that has been found by official variety tests to be inferior, misrepresented or unsuited to conditions within the State. The Commissioner may prohibit the sale of such seed by and with the advice of the director of research of the North Carolina agricultural experiment station.

p. Using a designation on seed tag in lieu of the full name and address of the person who labels or tags seed unless such designation qualifies as a code designation under this Article.

q. By variety name seed not certified by an official seed-certifying agency when it is a variety for which a certificate of plant variety protection under the Plant Variety Protection Act specifies sale only as a class of certified seed; provided, that seed from a certified lot may be labeled as to variety name when used in a mixture by, or with the approval of, the owner of the variety.

r. That employ a brand name on the label unless a variety or mixture of varieties is labeled as required in this Article. If a brand name

other than a registered trade mark is used, it must be a separate statement from the variety name or the statement of a mixture, or blend, of genetic variations.

s. Labeled as a "blend" unless the lot complies with the definition of "blend" in G.S. 106-277.2, and is registered with the Commissioner, as may be required in G.S. 106-277.9(1)n. Other mechanical combinations of varieties shall be labeled as a mixture according to the requirements in G.S. 106-277.5(1).

(2) To transport, offer for transportation, sell, offer for sale or expose for sale seeds, whole grain and screenings not for seeding purposes unless labeled "not for seeding purposes."

(3) To detach, alter, deface or destroy any label provided for in this Article or the rules and regulations promulgated thereunder, or to alter or substitute seed in any manner that defeats the purposes of this Article.

(4) To disseminate false or misleading advertisement in any manner concerning agricultural seeds, vegetable seeds or screenings.

(5) To hinder or obstruct in any manner an authorized agent of the Commissioner in the performance of his lawful duties.

(6) To fail to comply with or to supply inaccurate information in reply to a stop-sale order; or to remove tags attached to or to remove or dispose of seed or screenings held under a stop-sale order unless authorized by the Commissioner.

(7) To use the name of the Department of Agriculture or the results of tests and inspections made by the Department for advertising purposes.

(8) To use the words "type" or "trace" in lieu of information required by G.S. 106-277.4 through 106-277.7.

(9) To label and offer for sale seed under the scope of this Article without keeping complete records as specified in G.S. 106-277.12. (1941, c. 114, s. 5; 1943, c. 203, s. 3; 1945, c. 828; 1949, c. 725; 1953, c. 856, s. 4; 1957, c. 263, s. 2; 1959, c. 585, s. 2; 1963, c. 1182; 1971, c. 637, s. 6.)

Indictment for Sale of Improperly Labeled Seed. — An indictment under this section charging the sale or offering for sale of seed not labeled in accordance with § 106-277.3 should allege the person to whom defendant sold or offered to sell seed not properly labeled, or that the purchaser was in fact unknown, the particulars in which the label failed to meet the statutory requirements, and where and how the seed was exposed to sale. State v. Bissette, 250 N.C. 514, 108 S.E.2d 858 (1959).

An indictment under this section charging that defendant sold or offered for sale tobacco seed having a false or misleading label should allege the person to whom the seed was sold or offered for sale or that the purchaser was in fact unknown, and the intent to defraud. State v. Bissette, 250 N.C. 514, 108 S.E.2d 858 (1959).

Stated in Gore v. George J. Ball, Inc., 279 N.C. 192, 182 S.E.2d 389 (1971).

§ 106-277.10. Exemptions. — (a) When the required analysis and other information regarding the seed is present on a seedman's label or tag which bears an official North Carolina seed stamp or is accompanied by the North Carolina seed analysis tag on which is written, stamped or printed the words "See Attached Tag for Seed Analysis," the provisions of G.S. 106-277.5 through 106-277.7 shall be deemed to have been complied with.

(b) The official tag or label of the North Carolina Crop Improvement Association shall be considered an "official North Carolina seed analysis tag" when attached to containers of seed duly certified by the said Association or when it refers to an accompanying tag which carries the same information required in G.S. 106-277.5 through 106-277.7 and when fees applicable to the North Carolina seed analysis tag have been paid to the Commissioner.

(c) The label requirements for peanuts, cotton and tobacco seed may be limited to:

(1) Lot number or other identification.
(2) Origin, if known. If unknown, so stated.
(3) Commonly accepted name of kind and variety.
(4) Name and number per pound of noxious-weed seeds.
(5) Percentage of germination with month and year of tests.
(6) Name and address of person who labeled said seed or who sells, offers, or exposes said seed for sale.

(d) The provisions of G.S. 106-277.3 through 106-277.7 do not apply:
(1) To seed or grain sold or represented to be sold for purposes other than for seeding provided that said seed is labeled "not for seeding purposes" and that the vendor shall make it unmistakably clear to the purchaser of such seed or grain that it is not for seeding purposes.
(2) To seed for processing when consigned to, being transported to or stored in an approved processing establishment, provided that the invoice or labeling accompanying said seed bears the statement "seed for processing" and provided further that other labeling or representation which may be made with respect to the uncleaned or unprocessed seed shall be subject to this Article.
(3) To seed sold by a farmer grower to a seed dealer or processor, or to seed in storage in or consigned to a seed-cleaning or processing plant; provided that any labeling or other representation which may be made with respect to the uncleaned or unprocessed seed shall be subject to this Article.
(4) To any carrier in respect to any seed or screenings transported or delivered for transportation in the ordinary course of its business as a carrier; provided that such carrier is not engaged in producing, processing or marketing agricultural or vegetable seeds or screenings subject to provisions of this Article.

(e) No person shall be subject to the penalties of this Article for having sold, offered or exposed for sale in this State any agricultural or vegetable seeds which were incorrectly labeled or represented as to origin, kind or variety when such seeds cannot be identified by examination thereof unless such person has failed to obtain an invoice or grower's declaration giving origin, kind and variety or to take such other precautions as may be necessary to insure the identity to be that stated. (1941, c. 114, s. 4; 1943, c. 203, s. 2; 1945, c. 828; 1949, c. 725; 1959, c. 585, s. 1; 1963, c. 1182.)

Exemptions under this section are to be strictly construed. Gore v. George J. Ball, Inc., 279 N.C. 192, 182 S.E.2d 389 (1971).

Exemption Does Not Apply to Breach of Contract. — Exemptions from the penalties imposed by this Article are not intended to absolve the vendor from liability to the purchaser for breach of contract. Gore v. George J. Ball, Inc., 279 N.C. 192, 182 S.E.2d 389 (1971).

Mislabeled Seed. — The failure of a seed company to notify a customer, after receiving complaints from other customers that tomato seeds delivered to the customer were mislabeled, did not constitute negligence where the evidence disclosed that the defendant kept no records of the particular source of seed used to fill a given order, there being no duty to maintain such records, and defendant being unable to notify the customer in the absence of such data. Gore v. George J. Ball, Inc., 10 N.C. App. 310, 178 S.E.2d 237 (1971).

§ 106-277.11. Disclaimers, nonwarranties and limited warranties. — The use of a disclaimer, nonwarranty or limited warranty clause in any invoice, advertising [or] written, printed or graphic matter pertaining to any seed shall not constitute a defense, or be used as a defense in any way, in any prosecution or in any proceedings for confiscation of seeds brought under the provisions of this Article or rules and regulations made and promulgated thereunder. (1945, c. 828; 1949, c. 725; 1963, c. 1182.)

Effect of Warranty Limitation. — The provision of this section barring a defense based on a warranty limitation clause in any prosecution or in any proceedings for confiscation of seeds, does not have any bearing upon any other effect of such disclaimer or limitation clause. Gore v. George J. Ball, Inc., 179 N.C. 192, 182 S.E.2d 389 (1971).

Warranty Limitation Does Not Bar Recovery of Full Damages. — The phrase, "to the extent of the purchase price," used in a limitation of warranty, relied on by the seller of mislabeled seed, is contrary to the public policy of this State as declared in this Article and is invalid. Such a provision, even if it otherwise be deemed a part of the contract of sale, does not bar the buyer from a recovery of the full damages which he would otherwise be entitled to recover for the breach of the contract by the seller. Gore v. George J. Ball, Inc., 279 N.C. 192, 182 S.E.2d 389 (1971).

§ 106-277.12. Records. — All persons transporting or delivering for transportation, selling, offering or exposing for sale agricultural or vegetable seeds if their name appears on the label shall keep for a period of two years a file sample and a complete record of such seed, including invoices showing lot number, kind and variety, origin, germination, purity, treatment, and the labeling of each lot. The Commissioner or his duly authorized agents shall have the right to inspect such records in connection with the administration of this Article at any time during customary business hours. (1945, c. 828; 1949, c. 725; 1963, c. 1182.)

§ 106-277.13. Tolerances to be established and used in enforcement. — Due to variations which may occur between the analyses or tests and likewise between label statements and the results of subsequent analyses and tests, recognized tolerances shall be employed in the enforcement of the provisions of this Article, except as otherwise established by appropriate rules and regulations promulgated under authority of this Article. (1963, c. 1182.)

§ 106-277.14. Administration. — The duty of enforcing this Article and its rules and regulations and carrying out its provisions and requirements shall be vested in the Commissioner of Agriculture. (1963, c. 1182.)

§ 106-277.15. Rules, regulations and standards. — The Commissioner of Agriculture, jointly with the Board of Agriculture, after public hearing immediately following 10 days' public notice may adopt such rules, regulations and standards which they may find to be advisable or necessary to carry out and enforce the purposes and provisions of this Article, which shall have the force and effect of law. The Commissioner and Board of Agriculture shall adopt rules, regulations and standards as follows:

(1) Prescribing the methods of sampling, inspecting, analyzing, testing and examining agricultural and vegetable seed, and determining the tolerance to be followed in the administration of this Article.
(2) Declaring a list of prohibited and restricted noxious weeds, conforming with the definitions stated in this Article, and to add to or subtract therefrom, from time to time, after a public hearing following due public notice.
(3) Declaring the maximum percentage of total weed seed content permitted in agricultural seed.
(4) Declaring the maximum number of "restricted" noxious-weed seeds per pound of agricultural seed permitted to be sold, offered or exposed for sale.
(5) Declaring the minimum percentage of germination permitted for sale as "Agricultural Seeds."
(6) Declaring germination standards for vegetable seeds.
(7) Prescribing the form and use of tags or stamps to be used in labeling seed.

(8) Prescribing such other rules and regulations as may be necessary to secure the efficient enforcement of this Article. (1941, c. 114, s. 6; 1943, c. 203, s. 4; 1945, c. 828; 1949, c. 725; 1953, c. 856, s. 5; 1957, c. 263, s. 3; 1963, c. 1182.)

§ 106-277.16. Seed-testing facilities. — The Commissioner is authorized to establish and maintain or make provision for seed-testing facilities, to employ educationally qualified persons, to make or provide for making purity and germination tests of seeds, upon request, for farmers or seedsmen, and to prescribe rules and regulations governing such testing, and to incur such expenses as may be necessary to comply with these provisions. (1941, c. 114, s. 6; 1943, c. 203, s. 4; 1945, c. 828; 1949, c. 725; 1953, c. 856, s. 5; 1957, c. 263, s. 3; 1963, c. 1182.)

§ 106-277.17. Varieties or hybrids; registration; testing; prohibiting sale if inferior, misrepresented or unsuitable. — The Commissioner is authorized to require the registration, after field testing for performance and trueness-to-variety, of any variety or hybrid as a prerequisite to sale in this State and to promulgate rules and regulations pertaining to same. The Commissioner is further authorized to prohibit the sale of any variety or hybrid or any kind of crop, by and with the advice of the director of research of the North Carolina agricultural experiment station, that has been found by official field tests to be inferior, misrepresented or unsuited to conditions within the State. (1941, c. 114, s. 6; 1943, c. 203, s. 4; 1945, c. 828; 1949, c. 725; 1953, c. 856, s. 5; 1957, c. 263, s. 3; 1963, c. 1182.)

Editor's Note. — Session Laws 1955, c. 276, s. 1, changed "agricultural experiment station," as used in § 106-15, to read "agricultural research station."

§ 106-277.18. Registration and licensing of dealers. — It shall be the duty of the Commissioner and he is hereby authorized to require each seed dealer selling, offering or exposing for sale in, or exporting from, this State any agricultural or vegetable seeds for seeding purposes, including packet or package seeds, to register with the Commissioner and to obtain a license annually. (1941, c. 114, s. 7; 1945, c. 828; 1947, c. 928; 1949, c. 725; 1963, c. 1182.)

§ 106-277.19. Revocation or refusal of license for cause; hearing; appeal. — The Commissioner is authorized to revoke any seed license issued, or to refuse to issue a seed license to any person as hereinafter provided, upon satisfactory proof that said person has repeatedly violated any of the provisions of this Article or any of the rules and regulations made and promulgated thereunder; provided that no license shall be revoked or refused until the person shall have first been given an opportunity to appear at a hearing before the Commissioner. Any person who is refused a license, or whose license is revoked by any order of the Commissioner, may appeal within 30 days from said order to the Superior Court of Wake County or the superior court of the county of his residence. (1941, c. 114, s. 6; 1943, c. 203, s. 4; 1945, c. 828; 1949, c. 725; 1953, c. 856, s. 5; 1957, c. 263, s. 3; 1963, c. 1182.)

§ 106-277.20. Right of entry for purposes of inspection; duty of vendors. — For the purpose of carrying out this Article the Commissioner or his agent is authorized to enter upon any public or private premises during regular business hours in order to have access to seeds subject to this Article and the rules and regulations thereunder. It shall be the duty of the dealer or vendor to arrange seed lots so as to be accessible for inspection, and to provide such information and records as may be deemed necessary. (1941, c. 114, s. 6; 1943,

c. 203, s. 4; 1945, c. 828; 1949, c. 725; 1953, c. 856, s. 5; 1957, c. 263, s. 3; 1963, c. 1182.)

§ 106-277.21. Sampling, inspecting and testing; notice of violations. — It shall be the duty of the Commissioner, who may act through his authorized agents, to sample, inspect, make analysis of and test agricultural and vegetable seeds transported, held in storage, sold, offered or exposed for sale within this State for sowing purposes at such time and place and to such extent as he may deem necessary to determine whether said seeds are in compliance with the provisions of this Article, and to notify promptly the person or persons who transported, had in his possession, sold, offered or exposed the seeds for sale of any violation. (1941, c. 114, s. 6; 1943, c. 203, s. 4; 1945, c. 828; 1949, c. 725; 1953, c. 856, s. 5; 1957, c. 263, s. 3; 1963, c. 1182.)

§ 106-277.22. Stop-sale orders; penalty covering expenses; appeal. — The Commissioner is authorized to issue and enforce a written or printed "stop-sale" order to the owner or custodian of any lot of agricultural or vegetable seeds which the Commissioner, or his authorized agent, finds is in violation of any of the provisions of this Article or the rules and regulations promulgated thereunder, which order shall prohibit further sale or movement of such seed until such officer has evidence that the law has been complied with and a written release has been issued to the owner or custodian of said seed by the enforcement officer. Any person violating the labeling requirements of the law shall be subject to a penalty covering all costs and expenses incurred in connection with the withdrawal from sale and the release of said seed. With respect to seeds which have been denied sale as provided in this section, the owner, custodian or the person labeling such seeds shall have the right to appeal from such order to the superior court of the county in which the seeds are found, praying for judgment as to the justification of said order and for discharge of such seed from the order prohibiting the same in accordance with the findings of the court; and provided, further, that the provisions of this section shall not be construed as limiting the right of the enforcement officer to proceed as authorized by other sections of this Article. (1941, c. 114, s. 6; 1943, c. 203, s. 4; 1945, c. 828; 1949, c. 725; 1953, c. 856, s. 5; 1957, c. 263, s. 3; 1963, c. 1182.)

Stated in Gore v. George J. Ball, Inc., 279 N.C. 192, 182 S.E.2d 389 (1971).

§ 106-277.23. Notice of violations; hearings, prosecutions or warnings. — It shall be the duty of the Commissioner to give notice of every violation of the provisions of this Article with respect to agricultural or vegetable seeds, mixtures of such seeds, or screenings to the person in whose hands such seeds or screenings are found, and to send copies of such notice to the shipper of such seed or screenings and to the person whose "analysis tag or label" is attached to the container of such seeds or screenings, in which notice he may designate a time and place for a hearing. The person or persons involved shall have the right to introduce evidence either in person or by agent or attorney. If, after hearing, or without such hearing in the event the person fails or refuses to appeal, the Commissioner is of the opinion that the evidence warrants prosecution he may institute proceedings in a court of competent jurisdiction in the locality which the violation occurred or, if he believes the public interest will be adequately served thereby, he may direct to the alleged violator a suitable written notice or warning. (1941, c. 114, s. 8; 1945, c. 828; 1949, c. 725; 1963, c. 1182.)

§ 106-277.24. Penalty for violations. — Any person, firm or corporation violating any provision of this Article or any rule or regulation adopted pursuant

thereto shall be guilty of a misdemeanor and upon conviction thereof shall pay a fine of not more than five hundred dollars ($500.00). (1941, c. 114, s. 8; 1945, c. 828; 1949, c. 725; 1963, c. 1182.)

Stated in Gore v. George J. Ball, Inc., 279 N.C. 192, 182 S.E.2d 389 (1971).

§ 106-277.25. Seizure and disposition of seeds violating Article. — Any lot of agricultural or vegetable seeds, mixtures of such seeds or screenings being sold, exposed for sale, offered for sale or held with intent to sell in this State contrary to the provisions of this Article shall be subject to seizure on complaint of the Commissioner to the resident judge of the superior court in the county in which the seeds, mixtures of such seeds or screenings are located. In the event the court finds the seeds or screenings to be in violation of the provisions of this Article and orders the condemnation thereof, such seeds or screenings shall be denatured, processed, destroyed, relabeled, or otherwise disposed of in compliance with the laws of this State; provided that in no instance shall such disposition be ordered by the court without first having given the claimant an opportunity to apply to the court for the release of the seeds, mixtures of such seeds or screenings with permission to process or relabel to bring them into compliance with the provisions of this Article. (1945, c. 828; 1949, c. 725; 1963, c. 1182.)

Stated in Gore v. George J. Ball, Inc., 279 N.C. 192, 182 S.E.2d 389 (1971).

§ 106-277.26. Publication of test results and other information. — The Commissioner is authorized to publish the results of analyses, tests, examinations, studies and investigations made as authorized by this Article, together with any other information he may deem advisable. (1941, c. 114, s. 6; 1943, c. 203, s. 4; 1945, c. 828; 1949, c. 725; 1953, c. 856, s. 5; 1957, c. 263, s. 3; 1963, c. 1182.)

§ 106-277.27. Cooperation with United States Department of Agriculture. — The Commissioner is authorized to cooperate with the United States Department of Agriculture in seed law enforcement and testing seed for trueness as to kind and variety. (1941, c. 114, s. 6; 1943, c. 203, s. 4; 1945, c. 828; 1949, c. 725; 1953, c. 856, s. 5; 1957, c. 263, s. 3; 1963, c. 1182.)

§ 106-277.28. Fees for tags, stamps and licenses. — For the purpose of providing a fund to defray the expense of inspection, examination, analyses of seeds and enforcement of the provisions of the Article:

(1) Each seed dealer or grower selling, offering or exposing for sale in this State any agricultural or vegetable seeds for seeding purposes shall purchase from the Commissioner for two cents (2¢) each, official North Carolina seed analysis tags or stamps and shall attach a tag (or stamp on the seedman's label) to each container holding 10 pounds or more of seed; provided, however, that a seed dealer or grower who sells only seed lots originated by his company may request to pay these applicable fees through the reporting system prescribed in subdivision (3) hereof; provided, further, that this subdivision shall not apply to the sale of seed by a farmer who sells only seed grown on his farm and when such sales are confined to his farm.

(2) Each seed dealer selling, offering, or exposing for sale in, or exporting from, this State any agricultural or vegetable seeds for seeding purposes shall register with the Commissioner and shall obtain a license

annually on January 1 of each year and shall pay for such license as follows:

a. Wholesale, or wholesale and retail, seed dealer in one location $25.00
b. Central office of chain stores, or wholesale cooperatives operating within this State selling or furnishing seeds for retail $25.00
c. Each retailer of seeds or branch of wholesale dealer or cooperative selling seeds at different locations with sales in excess of five hundred dollars ($500.00) $15.00
d. Each retailer of seeds, including chain stores, with sales more than three hundred dollars ($300.00) but not in excess of five hundred dollars ($500.00) $10.00
e. Each retailer of seeds, including chain stores, with sales more than one hundred dollars ($100.00) but not in excess of three hundred dollars ($300.00) ..... $ 5.00
f. Each retailer of seeds, including chain stores with sales not in excess of one hundred dollars ($100.00) ..... $ 1.00
g. Each retail dealer or place of business selling only "packet" vegetable and flower seeds: one dollar ($1.00) for retail value less than one hundred dollars ($100.00); two dollars ($2.00) for the first one hundred dollars ($100.00); and two dollars ($2.00) for each one hundred dollars ($100.00) thereafter, based on commission or consignment. Containers which hold one pound or less of seed are considered packets.

(3) A seed dealer or grower who sells only seed lots originated by his company may request of the Commissioner of Agriculture authority to report the quantity of seed sold and to pay the fees applicable under G.S. 106-277.28(1) in lieu of attaching an official North Carolina tag or stamp to each container of seeds weighing 10 pounds or more.

Upon granting authority, the Commissioner of Agriculture shall require each seed dealer or grower to keep such records as may be necessary to indicate accurately the quantity of seeds and container weights sold from each distribution point in the State. Such records shall be available to the Commissioner or his duly authorized representative at any and all reasonable hours for the purpose of making such examination as is necessary to verify the quantity of seed sold and the fees paid. Each seed dealer or grower shall report quarterly on forms furnished by the Commissioner the quantity and container weight of seeds sold. The reports shall be made on the first day of January, April, July, and October, or within 10 days thereafter, and the inspection fee shall be due and payable with the report. If the report is not filed and the inspection fee paid to the Department of Agriculture by the tenth day following the date due, or if the report of the quantity or container weights be false, the Commissioner may revoke the authority to use the reporting system. If the inspection fee is unpaid more than 15 days after the due date, the amount due shall bear a penalty of ten percent (10%) which shall be added to the inspection fee due and the Commissioner shall have authority to deduct said amount due and penalty from the cash, securities or bond which has been deposited with the Department of Agriculture.

In order to guarantee faithful performance with the provisions of this section, each seed dealer or grower, before being granted a permit to use the reporting system, shall deposit with the Commissioner cash in the amount of five hundred dollars ($500.00) or securities acceptable to the Commissioner of a value of at least five hundred dollars ($500.00)

or shall post with the Commissioner a surety bond in like amount, executed by some corporate surety company authorized to do business in North Carolina. (1941, c. 114, s. 7; 1945, c. 828; 1947, c. 928; 1949, c. 725; 1963, c. 1182; 1969, c. 105.)

§ 106-277.29. Investigation committee; appointment; duties; authority. — (a) When any farmer believes that he has been damaged by the failure of agricultural or vegetable seed to produce or perform as represented by the label attached to such seed as required by G.S. 106-277.3, such farmer may make a sworn complaint against the dealer from whom such seeds were purchased, alleging the damages sustained, or to be sustained, and file same with the Commissioner of Agriculture within 10 days after alleged defect or violation becomes apparent and the farmer shall send a copy of said complaint to said dealer by United States registered mail. A filing fee of ten dollars ($10.00) shall be paid to the Commissioner of Agriculture with each complaint filed. Within 10 days after receipt of a copy of the complaint, the dealer may file with the Commissioner of Agriculture his answer to said complaint and send a copy of same to the farmer by United States registered mail.

(b) Any seed dealer against whom suit is brought in any court, state or federal, by a farmer who alleges that he has been damaged by the failure of seeds purchased from a seed dealer to perform as labeled, may request an investigation by the investigating committee.

(c) The Commissioner of Agriculture shall refer the complaint and the answer thereto to the investigation committee provided in this Article for investigation, findings and recommendations on the matters complained of.

(d) The Commissioner of Agriculture shall appoint an investigation committee composed of five members, one each to be appointed upon the recommendation of the following: Director of the North Carolina Agricultural Experiment Stations, N.C. State University; Director of the North Carolina Agricultural Extension Service, N.C. State University; and President of the North Carolina Seedmen's Association. The other two members shall be appointed by the Commissioner of Agriculture. One of the members appointed by the Commissioner of Agriculture must be a farmer who is not connected in any way in selling seeds at retail or wholesale. Each member shall continue to serve until replaced by the Commissioner of Agriculture. The committee shall elect a chairman and a secretary from its membership. It shall be the duty of the chairman to conduct all meetings and deliberations held by the committee and to direct all other activities of the committee. It shall be the duty of the secretary to keep accurate and correct records on all meetings and deliberations and perform other duties for the committee as directed by the chairman.

(e) The purpose of the investigation committee is to assist farmers and agricultural seed dealers in determining the facts relating to matters alleged in complaints made by farmers against dealers. The committee may recommend money damages be paid the farmer as a result of alleged failure of seeds to produce as represented by the label on the seed container.

(f) The investigation committee may be called into session by the Commissioner of Agriculture at his discretion or upon the direction of the chairman to consider matters referred to it by the Commissioner of Agriculture.

(g) When the Commissioner of Agriculture refers to the investigation committee any complaint made by a farmer against a dealer, said committee shall make a full and complete investigation of the matters complained of, and at the conclusion of said investigation, report its findings to the Commissioner of Agriculture. Upon receipt of same, the Commissioner of Agriculture shall transmit the findings and recommendations of the investigation committee to the farmer and to the dealer by United States registered mail. Neither the farmer nor the dealer shall be bound by the recommendations of the investigation committee.

(h) In conducting its investigation, the investigation committee is authorized:

(1) To examine the farmer on his farming operation of which he complains and the dealer on his packaging, labeling and selling operation of the seed alleged to be faulty;

(2) To grow to production a representative sample of the alleged faulty seed through the facilities of the State, under the supervision of the Commissioner of Agriculture when such action is deemed by the committee to be necessary;

(3) To hold informal hearings at a time and place directed by the chairman of the committee upon reasonable notice to the farmer and the dealer;

(4) To seek evaluations from authorities in allied disciplines, when deemed necessary.

(i) The committee shall keep a record of its activities and reports on file in the North Carolina Department of Agriculture.

(j) Any investigation made by less than the whole membership of the committee shall be by authority of a written directive by the chairman and such investigation shall be summarized in writing and considered by the committee in reporting its findings and making its recommendations. (1971, c. 637, s. 7.)

§§ 106-278 to 106-284.4: Reserved for future codification purposes.

Editor's Note. — See note to § 106-277.

ARTICLE 31A.

Seed Potato Law.

§§ 106-284.5 to 106-284.13: Repealed by Session Laws 1973, c. 294.

Editor's Note. — Repealed § 106-284.12 was amended by Session Laws 1973, c. 108, s. 55, which deleted a reference to "solicitors of inferior courts."

ARTICLE 31B.

Vegetable Plant Law.

§ 106-284.14. Title. — This Article shall be known as the "Vegetable Plant Law." (1959, c. 91, s. 1.)

Editor's Note. — Session Laws 1973, c. 1370, which extensively amended this Article, adds, in s. 8, a section designated § 106-284.23, which reads as follows:

"§ 106-284.23. If any provision of this law or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this law which can be enforced independently without any invalid provision or application and to this end the provisions of this law are declared to be severable."

§ 106-284.15. Purpose of Article. — The purpose of this Article is to improve vegetable production in North Carolina and to enable vegetable producers to secure vegetable plants for transplanting that are free from diseases and insects, and in order to prevent the spread of diseases and insects affecting the future stability of the vegetable industry and the general welfare of the public. (1959, c. 91, s. 2; 1973, c. 1370, s. 1.)

Editor's Note. — The 1973 amendment substituted "production" for "practices" near the beginning of the section.

§ 106-284.16. Definitions. — For the purpose of this Article, the following terms shall be construed respectively to mean:

(1) "Certified vegetable plants for transplanting" shall mean plants which have been tagged or labeled so as to indicate that such plants have been inspected by an authorized agent of an officially recognized State inspecting or certifying agency of some state, and found to conform to the appropriate standards set by the North Carolina Board of Agriculture.

(2) "Vegetable plants" shall mean such plants as asparagus, pepper, eggplant, sweet potato, onion, cabbage and other cole crops, tomato plants, white seed potatoes and onion sets intended for transplanting purposes and such other vegetable plants intended for transplanting purposes as the North Carolina Board of Agriculture may designate by regulation in order to protect the vegetable industry.

(3) As applied to vegetable plants "standards" include the qualities of color, freshness, firmness, strength, straightness, unbroken and undamaged condition, uniformity of size, and freedom from injurious insects, diseases, nematodes, snails, and other pests and means the standards with respect thereto as established and fixed in regulations adopted by the North Carolina Board of Agriculture. (1959, c. 91, s. 3; 1973, c. 1370, s. 2.)

Editor's Note. — The 1973 amendment rewrote this section.

§ 106-284.17. Unlawful to sell plants not up to standard and not appropriately tagged or labeled. — It shall be unlawful for any person, firm, or corporation to pack for sale, offer or expose for sale, or ship into this State any vegetable plants which do not meet the appropriate standards as set by the North Carolina Board of Agriculture and which have not been appropriately tagged or labeled as certified vegetable plants for transplanting. (1959, c. 91, s. 4; 1973, c. 1370, s. 3.)

Editor's Note. — The 1973 amendment inserted "as set by the North Carolina Board of Agriculture."

§ 106-284.18. Rules and regulations. — The State Board of Agriculture is hereby authorized to adopt reasonable rules and regulations to carry out the intent, purposes and provisions of this Article. (1959, c. 91, s. 5; 1973, c. 1370, s. 4.)

Editor's Note. — The 1973 amendment inserted "intent, purposes and."

§ 106-284.19. Inspection; interference with inspectors; "stop-sale" notice. — To enforce the provisions of this Article effectively, the Commissioner of Agriculture and his duly authorized agents are authorized to inspect vegetable plants, and may enter any place of business, warehouse, common carrier or other places where such vegetable plants are stored or being held, for the purpose of making such an inspection; and it shall be unlawful for any person, firm or corporation in custody of such vegetable plants or of the place in which the same are held to interfere with the Commissioner or his duly authorized agents in making such inspections. When the Commissioner or his authorized inspectors find vegetable plants being held, offered or exposed for sale in violation of any

of the provisions of this Article or any rule or regulation adopted pursuant thereto, he may issue a "stop-sale notice" to the owner or custodian of any such vegetable plants and shall tag such plants as are in violation. It shall be unlawful for anyone after notice or receipt of such "stop-sale notice" to remove such notice from plants or from any location to which attached; or to plant, sell, give away, move or exchange for transplanting purposes any plants in respect to which such notice has been issued unless and until so authorized by the Commissioner or his agent or a court of competent jurisdiction. (1959, c. 91, s. 6; 1973, c. 1370, s. 5.)

Editor's Note. — The 1973 amendment rewrote the former second sentence as the present second and third sentences.

§ 106-284.20. Interference with Commissioner, etc., or other violation a misdemeanor; penalties. — If anyone shall interfere with or attempt to interfere with the Commissioner or any of his agents, while engaged in the performance of his duties under this law or shall violate any provision of this law or any rule or regulation of the Board of Agriculture adopted pursuant to this law, he shall be guilty of a misdemeanor and shall be fined and imprisoned in the discretion of the court. Each day's violation shall constitute a separate offense. (1959, c. 91, s. 7; 1973, c. 1370, s. 6.)

Editor's Note. — The 1973 amendment rewrote this section.

§ 106-284.21. Authority to permit sale of substandard plants. — Notwithstanding any other provision of this Article, the Commissioner of Agriculture is authorized when the public necessity, welfare, economy, or any emergency situation requires it, to permit for such periods of time as, in his discretion may seem necessary, the sale of vegetable plants for transplanting purposes which do not meet the standards referred to in G.S. 106-284.16. (1959, c. 91, s. 8.)

§ 106-284.22. When Article not applicable. — The provisions of this Article shall not apply:

(1) To the sale by a grower or retail merchant of vegetable plants grown within this State when such sale is made for home or garden or any noncommercial use; provided, however, the provisions shall apply to such sale when such plants are found to be infested with pests so that the exposure for sale or planting is deemed by the Commissioner or his agent to be a hazard to the commercial vegetable industry of North Carolina.

(2) To the sale of vegetable plants for commercial transplanting purposes in this State when grown within this State and sold by a plant producer to a planter having personal knowledge of the conditions under which such vegetable plants were grown or produced provided that such plants are transplanted within a 30-mile radius at which they were grown; but also provided, however, the provisions shall apply to such sale when such plants are found to be infested with pests so that the exposure for sale or planting is deemed by the Commissioner or his agent to be a hazard to the commercial vegetable industry of North Carolina. (1959, c. 91, s. 9; 1973, c. 1370, s. 7.)

Editor's Note. — The 1973 amendment rewrote this section. The principal changes of substance were the addition of the provisos in subdivisions (1) and (2) and the insertion of the word "commercial" near the beginning of subdivision (2).

§§ 106-284.23 to 106-284.29: Reserved for future codification purposes.

ARTICLE 31C.

North Carolina Commercial Feed Law of 1973.

§ 106-284.30. Title. — This Article shall be known as the "North Carolina Commercial Feed Law of 1973." (1973, c. 771, s. 2.)

Editor's Note. — Session Laws 1973, c. 771, s. 18, contains a severability clause.

Session Laws 1973, c. 771, s. 19, subsection (b), provides: "(b) Notwithstanding any other provisions of law, all existing rules and regulations concerning commercial feeds and canned pet foods of the North Carolina Department of Agriculture and any other agency of the State of North Carolina, not inconsistent with the provisions of this act shall continue in full force and effect until repealed, modified or amended."

§ 106-284.31. Purpose. — The purpose of this Article is to regulate the manufacture and distribution of commercial feeds in the State of North Carolina and to protect a farmer-buyer from the manufacturer-seller of concentrated, commercial feed who might sell substandard or mislabeled feedstuff, and not to protect from himself a farmer who mixes his own feed. (1973, c. 771, s. 1.)

§ 106-284.32. Enforcing official. — This Article shall be administered by the Commissioner of Agriculture of the State of North Carolina, hereinafter referred to as the "Commissioner." (1973, c. 771, s. 3.)

§ 106-284.33. Definitions of words and terms. — When used in this Article:

(1) The term "Board" means the North Carolina State Board of Agriculture.

(2) The term "brand name" means any word, name, symbol, or device, or any combination thereof, identifying the commercial feed of a distributor or registrant and distinguishing it from that of others.

(3) The term "canned pet food" means any commercial feed packed in cans or hermetically sealed containers, and used or intended for use as food for pets.

(4) The term "commercial feed" means all materials, except whole unmixed seed such as corn, including physically altered entire unmixed seeds when not adulterated within the meaning of G.S. 106-284.38(1), which are distributed for use as feed or for mixing in feed; provided, that the Board by regulation may exempt from this definition, or from specific provisions of this Article, hay, straw, stover, silage, cobs, husks, hulls and individual chemical compounds or substances which are not intermixed or mixed with other materials, and are not adultered within the meaning of G.S. 106-284.38(1).

(5) The term "customer-formula feed" means commercial feed, each batch of which is mixed according to the formula of the customer, furnished in writing over the signature of the customer or his designated agent with each batch moved directly from the manufacturer to the customer and not stocked or displayed in a dealer's warehouse or sales area and not resold or redistributed to any person.

(6) The term "distribute" means to offer for sale, sell, exchange, or barter, commercial feed.

(7) The term "distributor" means any person who distributes.
(8) The term "drug" means any article intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in animals other than man and articles other than feed intended to affect the structure or any function of the animal body.
(9) The term "feed ingredient" means each of the constituent materials making up a commercial feed.
(10) The term "label" means a display of written, printed, or graphic matter upon or affixed to the container in which a commercial feed is distributed, or on the invoice or delivery slip with which a commercial feed is distributed.
(11) The term "labeling" means all labels and other written, printed, or graphic matter (i) upon a commercial feed or any of its containers or wrapper or (ii) accompanying such commercial feed, or advertisement, brochures, posters, television and radio announcements used in promoting the sale of such commercial feed.
(12) The term "manufacture" means to grind, mix or blend, or further process a commercial feed for distribution.
(13) The term "mineral feed" means a commercial feed intended to supply primarily mineral elements or inorganic nutrients.
(14) The term "official sample" means a sample of feed taken by the Commissioner or his agent in accordance with the provisions of G.S. 106-284.42(a), (c) or (e).
(15) The terms "percent" or "percentage" means percentage by weight, except in G.S. 106-284.42 where these terms refer to the retail value of the lot of commercial feed.
(16) The term "permitted analytical variation" means allowance for the inherent variability in sampling and laboratory analysis in guaranteed components. Manufacturing variations and their effect on the guaranteed components are not included in such values.
(17) The term "person" means an individual, a partnership, a corporation, an association, and any other legal entity.
(18) The term "pet" means any domesticated animal normally maintained in or near the household(s) of the owner(s) thereof.
(19) The term "pet food" means any commercial feed prepared and distributed for consumption by pets.
(20) The term "product name" means the name of the commercial feed which identifies it as to kind, class, or specific use.
(21) The term "specialty pet" means any domesticated animal pet normally maintained in a cage or tank, such as, but not limited to, gerbils, hamsters, canaries, psittacine birds, mynahs, finches, tropical fish, goldfish, snakes and turtles.
(22) The term "specialty pet food" means any commercial feed prepared and distributed for consumption by specialty pets.
(23) The term "ton" means a net weight of 2,000 pounds avoirdupois. (1973, c. 771, s. 4.)

§ 106-284.34. Registration. — (a) No person shall manufacture or distribute a commercial feed in this State, unless he has filed with the Commissioner on forms provided by the Commissioner, his name, place of business, and location of each manufacturing facility in this State, if any, and made application to the Commissioner for a permit to report the quantity of commercial feed distributed in this State.

(b) Manufacturers of registered feeds may apply for, and the Commissioner at his discretion may issue, numbered permits authorizing manufacturers of registered feeds to purchase commercial feed as defined in G.S. 106-284.33(4), and the responsibility for the payment of the inspection fee assessed by the

provisions of this Article will be assumed by the purchaser to whom such permit has been issued. The Commissioner may at his discretion, and without notice, cancel any permit issued under the provision of this section. The use of permits issued under the provisions of this section shall be governed by rules and regulations promulgated by the Commissioner.

(c) No person shall distribute in this State a commercial feed, except a customer-formula feed, which has not been registered pursuant to the provisions of this section. The application for registration shall be submitted in the manner prescribed by the Commissioner. Upon approval by the Commissioner or his duly designated agent the registration shall be issued to the applicant. All registrations expire on the thirty-first day of December of each year. An annual registration fee of one dollar ($1.00) for each commercial feed other than canned pet food shall accompany each request for registration. An annual registration fee of five dollars ($5.00) for each canned pet food shall accompany each request for registration.

(d) The Commissioner is empowered to refuse registration of any commercial feed not in compliance with the provisions of this Article and to cancel any registration subsequently found not to be in compliance with any provisions of this Article: Provided, that no registration shall be refused or canceled unless the registrant shall have been given an opportunity to be heard before the Commissioner or his duly designated agent and to amend his application in order to comply with the requirements of this Article.

(e) The manufacturer of commercial feed that has not been registered and is found being distributed in the State shall pay a twenty-five dollar ($25.00) delinquent registration fee in addition to the regular registration fee. (1973, c. 771, s. 5.)

§ 106-284.35. Labeling. — A commercial feed shall be labeled as follows:

(1) In case of commercial feed, except a customer-formula feed, it shall be accompanied by a label bearing the following information:
   a. The net weight.
   b. The product name and the brand name, if any, under which the commercial feed is distributed.
   c. The guaranteed analysis stated in such terms as the Board by regulation determines is required to advise the users of the composition of the feed or to support claims made in the labeling. In all cases the substances or elements must be determinable by laboratory methods such as the methods published by the Association of Official Analytical Chemists.
   d. The common or usual name of each ingredient used in the manufacture of the commercial feed: Provided, that the Board by regulation may permit the use of collective terms for a group of ingredients which perform a similar function, or the Board may exempt such commercial feeds, or any group thereof, from this requirement of an ingredient statement if it finds that such statement is not required in the interest of consumers.
   e. The name and principal mailing address of the manufacturer or the person distributing the commercial feed.
   f. Adequate directions for use for all commercial feeds containing drugs and for such other feeds as the Board may require by regulations as necessary for their safe and effective use.
   g. Such precautionary statements as the Board by regulation determines are necessary for the safe and effective use of the commercial feed.

(2) In the case of a customer-formula feed, it shall be accompanied by a label, invoice, delivery slip, or other shipping document to be presented to the purchaser at time of delivery, bearing the following information:

a. Name and address of the manufacturer.
b. Name and address of the purchaser.
c. Date of delivery.
d. The product name and brand name, if any, and the net weight of each registered commercial feed used in the mixture, and the net weight of each other ingredient used.
e. Adequate directions for use for all customer-formula feeds containing drugs and for such other feeds as the Board may require by regulation as necessary for their safe and effective use.
f. Such precautionary statements as the Board by regulation determines are necessary for the safe and effective use of the customer-formula feed. (1973, c. 771, s. 6.)

§ 106-284.36. Bag weights. — All commercial feed, except that in bags or packages of five pounds or less, shall be in such standard-weight bags or packages as the Board by regulation shall prescribe. (1973, c. 771, s. 7.)

§ 106-284.37. Misbranding. — A commercial feed shall be deemed to be misbranded:

(1) If its labeling is false or misleading in any particular.
(2) If it is distributed under the name of another commercial feed.
(3) If it is not labeled as required in G.S. 106-284.35.
(4) If it purports to be or is represented as a commercial feed, or if it purports to contain or is represented as containing a commercial feed ingredient, unless such commercial feed or feed ingredient conforms to the definition, if any, prescribed by regulation by the Board.
(5) If any word, statement, or other information required by or under authority of this Article to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use. (1973, c. 771, s. 8.)

§ 106-284.38. Adulteration. — A commercial feed shall be deemed to be adulterated:

(1) a. If it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance, such commercial feed shall not be considered adulterated under this subdivision if the quantity of such substance in such commercial feed does not ordinarily render it injurious to health; or
b. If it bears or contains any added poisonous, added deleterious, or added nonnutritive substance which is unsafe within the meaning of section 406 of the Federal Food, Drug and Cosmetic Act (other than one which is (i) a pesticide chemical in or on a raw agricultural commodity; or (ii) a food additive); or
c. If it is, or it bears or contains, any food additive which is unsafe within the meaning of section 409 of the Federal Food, Drug and Cosmetic Act; or
d. If it is a raw agricultural commodity and it bears or contains a pesticide chemical which is unsafe within the meaning of section 408(a) of the Federal Food, Drug and Cosmetic Act; provided, that where a pesticide chemical has been used in or on a raw agricultural commodity in conformity with an exemption granted or a tolerance prescribed under section 408 of the Federal Food, Drug and Cosmetic Act and such raw agricultural commodity has been subjected to processing such as canning, cooking, freezing,

dehydrating, or milling, the residue of such pesticide chemical remaining in or on such processed feed shall not be deemed unsafe if such residue in or on the raw agricultural commodity has been removed to the extent possible in good manufacturing practice and the concentration of such residue in the processed feed is not greater than the tolerance prescribed for the raw agricultural commodity unless the feeding of such processed feed will result or is likely to result in a pesticide residue in the edible product of the animal, which is unsafe within the meaning of section 408(a), of the Federal Food, Drug and Cosmetic Act.

e. If it is, or it bears or contains, any color additive which is unsafe within the meaning of section 706 of the Federal Food, Drug and Cosmetic Act.

(2) If any valuable constituent has been in whole or in part omitted or abstracted therefrom or any less valuable substance substituted therefor.

(3) If its composition or quality falls below or differs from that which it is purported or is represented to possess by its labeling.

(4) If it contains a drug and the methods used in or the facilities or controls used for its manufacture, processing, or packaging do not conform to current good manufacturing practice regulations promulgated by the Board to assure that the drug meets the requirements of this Article as to safety and has the identity and strength and meets the quality and purity characteristics which it purports or is represented to possess. In promulgating such regulations, the Board shall adopt the current good manufacturing practice regulations for medicated feed premixes and for medicated feeds established under authority of the Federal Food, Drug and Cosmetic Act, unless it determines that they are not appropriate to the conditions which exist in this State.

(5) If it contains viable weed seeds in amounts exceeding the limits which the Board shall establish by rule or regulation. (1973, c. 771, s. 9.)

§ 106-284.39. Prohibited acts. — The following acts and the causing thereof within the State of North Carolina are hereby prohibited:

(1) The manufacture or distribution of any commercial feed that is adulterated or misbranded.

(2) The adulteration or misbranding of any commercial feed.

(3) The distribution of agricultural commodities such as whole seed, hay, straw, stover, silage, cobs, husks, and hulls, which are adulterated within the meaning of G.S. 106-284.38(1).

(4) The removal or disposal of a commercial feed in violation of an order under G.S. 106-284.43.

(5) The failure or refusal to register in accordance with G.S. 106-284.34.

(6) The violation of G.S. 106-284.44(f).

(7) Failure to pay inspection fees and file reports as required by G.S. 106-284.40.

(8) The use of metal fasteners as bag fasteners or for attaching labels to the containers of commercial feed. (1973, c. 771, s. 10.)

§ 106-284.40. Inspection fees and reports. — (a) An inspection fee at the rate of two cents (2¢) for each carton of 48 cans shall be paid on canned pet food distributed in this State by the person whose name appears on the label as the manufacturing distributor or guarantor subject to (b)(1), (2), (3), and (5) of this section.

(b) An inspection fee at the rate of twelve cents (12¢) per ton shall be paid on commercial feeds distributed in the State by the person whose name appears

on the label of the commercial feed as the manufacturer, distributor or guarantor of the commercial feed, subject to the following:

(1) No fee shall be paid on a commercial feed if the payment has been made by a previous distributor.

(2) No fee shall be paid on customer-formula feeds if the inspection fee is paid on the commercial feeds which are used as ingredients therein.

(3) No fee shall be paid on commercial feeds which are used as ingredients or a base for the manufacture of commercial feeds which are registered, if the fee has already been paid. If the inspection fee has already been paid on such commercial feed, the amount paid shall be deducted from the gross amount due on the total feed produced.

(4) In the case of a commercial feed other than canned pet food which is distributed in the State only in packages of five pounds or less, an annual registration fee of twenty-five dollars ($25.00) shall be paid in lieu of the inspection fee specified above.

(5) The minimum inspection fee shall be ten dollars ($10.00) per quarter unless no feed was sold in the State during the quarter.

(c) Each person who is liable for the payment of such fee shall:

(1) File, not later than the last day of January, April, July and October of each year, a quarterly statement setting forth the the number of net tons of commercial feeds and/or cases of canned pet food distributed in this State during the preceding calendar quarter, and upon filing such statements shall pay the inspection fee at the rate stated in subsections (a) and (b) of this section. Inspection fees which are due and owing and have not been remitted to the Commissioner within 15 days following the due date shall have a penalty fee of ten percent (10%) (minimum ten dollars ($10.00)) added to the amount due when payment is finally made. The assessment of this penalty fee shall not prevent the Commissioner from taking other actions as provided in this Chapter.

(2) Keep such records as may be necessary or required by the Commissioner to indicate accurately the tonnage of commercial feed distributed in this State, and the Commissioner or his duly designated agent shall have the right to examine such records during normal business hours, to verify statements of tonnage. Failure to make an accurate statement of tonnage or to pay the inspection fee or comply as provided herein shall constitute sufficient cause for the cancellation of all registrations on file for the distributor. (1973, c. 771, s. 11.)

§ 106-284.41. Rules and regulations. — (a) The Board is authorized to promulgate such rules and regulations for commercial feeds and pet foods as are specifically authorized in this Article and such other reasonable rules and regulations as may be necessary for the efficient enforcement of this Article. In the interest of uniformity the Board shall by regulation adopt, unless it determines that they are inconsistent with the provisions of this Article or are not appropriate to conditions which exist in this State, the following:

(1) The official definitions of feed ingredients and official feed terms adopted by the Association of American Feed Control Officials and published in the official publication of that organization, and

(2) Any regulations promulgated pursuant to the authority of the Federal Food, Drug and Cosmetic Act ([21] U.S.C. section 301 et seq.).

(b) Before the issuance, amendment, or repeal of any rule or regulation authorized by this Article, the Board shall publish the proposed regulation, amendment, or notice to repeal an existing regulation in a manner reasonably calculated to give interested parties, including all current registrants, adequate notice and shall afford all interested persons an opportunity to present their views thereon, orally or in writing, within a reasonable period of time. After consideration of all views presented by interested persons, the Board shall take

appropriate action to issue the proposed rule or regulation or to amend or repeal an existing rule or regulation. The provisions of this subsection notwithstanding, if the Board pursuant to the authority of this Article, adopts the official definitions of feed ingredients or official feed terms as adopted by the Association of American Feed Control Officials, or regulations promulgated pursuant to the authority of the Federal Food, Drug and Cosmetic Act, any amendment or modification adopted by said Association or by the Secretary of Health, Education and Welfare in the case of regulations promulgated pursuant to the Federal Food, Drug and Cosmetic Act, shall be deemed adopted automatically under this Article without regard to the publication of the notice required by this subsection (b), unless the Board by resolution specifically determines that said amendment or modification shall not be adopted. (1973, c. 771, s. 12.)

§ 106-284.42. Inspection, sampling, and analysis. — (a) For the purpose of enforcement of this Article, and in order to determine whether its provisions have been complied with, including whether or not any operations may be subject to such provisions, officers or employees duly designated by the Commissioner upon presenting appropriate credentials, to the owner, operator, or agent in charge, are authorized (i) to enter, during normal business hours or actual operation, any factory, warehouse, or establishment within the State in which commercial feeds are manufactured, processed, packed, or held for distribution and take samples therefrom or to enter any vehicle being used to transport or hold such feeds and take samples therefrom; and (ii) to inspect during normal business hours or while in operation, such factory, warehouse, establishment or vehicle and all pertinent equipment, finished or unfinished materials, containers, and labeling therein. The inspection may include the verification of such records, and production and control procedures as may be necessary to determine compliance with this Article.

(b) A separate presentation of appropriate credentials shall be given for each such inspection, but a presentation shall not be required for each entry made during the period covered by the inspection. Each such inspection shall be commenced and completed with reasonable promptness. Upon completion of the inspection, the person in charge of the facility or vehicle shall be so notified.

(c) If the officer or employee making such inspection of a factory, warehouse, or other establishment has obtained a sample(s) in the course of the inspection, upon completion of the inspection and prior to leaving the premises he shall give to the owner, operator, or agent in charge a receipt describing the sample(s) obtained.

(d) If the owner of any factory, warehouse or establishment described in subsection (a), or his agent, refuses to admit the Commissioner or his agent to inspect in accordance with subsections (a) and (b), the Commissioner or his agent is authorized to obtain without notice from any district or superior court judge within the county where the facility is located, an order directing such owner or his agent to submit the premises described in such order to inspection.

(e) Sampling and analysis shall be conducted in accordance with methods published by the Association of Official Analytical Chemists, or in accordance with other generally recognized methods.

(f) The results of all analyses of official samples shall be forwarded by the Commissioner to the person named on the label and to the dealer. When the inspection and analysis of an official sample indicates a commercial feed has been adulterated or misbranded, and upon written request within 30 days following receipt of the analysis, the Commissioner shall furnish to the registrant a portion of the sample concerned.

(g) The Commissioner, in determining for administrative purposes whether a commercial feed is deficient in any component, shall be guided by the official sample as defined in G.S. 106-284.33, subdivision (14), and obtained and analyzed as provided for in subsections (a), (c), and (e) of this section.

(h) The Board is authorized to adopt regulations establishing permitted analytical variation providing for reasonable deviation from the guaranteed analysis.

(i) The registrant of a commercial feed found to be in significant violative deviation from the guarantee shall be subject to a penalty for this deviation.

(j) If the analysis of a sample shows a deviation from permitted analytical variation established by the Board, the registrant or other responsible person shall be penalized according to the following schedule:

Component Deviating	*Method of Penalty Assessment*
Crude protein	Three times the relative percentage * of deviation from the guarantee times the retail value of the commercial feed.
Crude fat	Ten percent (10%) of retail value of the lot of commercial feed.
Crude fiber	Ten percent (10%) of retail value of the lot of commercial feed.
Vitamins	Ten percent (10%) of retail value of the lot of commercial feed.
Minerals	Ten percent (10%) of retail value of the lot of commercial feed.
Crude protein equivalent from nonprotein nitrogen	Ten percent (10%) of retail value of the lot of commercial feed.
Animal drugs	Twenty percent (20%) of retail value of the lot of commercial feed.
Antibiotics	Twenty percent (20%) of retail value of the lot of commercial feed.
Other analysis	Ten percent (10%) of retail value of the lot of commercial feed.

* Example, a feed guaranteed 16.0% protein and assaying only 14.0%, will be considered as 2.0%/16.0%, or 12.5% deficient in protein. The penalty will be computed as 3 x 0.125 x retail value of the feed, or 0.375 x retail value of the feed.

(k) Penalties for multiple deficiencies within a sample shall be additive; provided that in no case shall the penalty exceed the retail value of the product. The minimum penalty under any of the foregoing provisions shall be twenty-five dollars ($25.00) or the retail value of the product whichever is smaller, regardless of the value of the deficiency.

(l) Within 60 days from the date of written notice by the Commissioner or his duly designated agent to the manufacturer, guarantor, dealer or agent, all penalties assessed and collected under this section shall be paid to the purchaser of the lot of feed or canned pet food represented by the sample analyzed. When such penalties are paid, receipts shall be taken and promptly forwarded to the Commissioner of Agriculture. If said consumers cannot be found, the amount of the penalty assessed shall be paid to the Commissioner of Agriculture who shall deposit the same in the Department of Agriculture fund, of which the State Treasurer is custodian, for the express purpose of enforcement of this Article. (1973, c. 771, s. 13.)

§ 106-284.43. Detained commercial feeds. — (a) "Withdrawal from distribution" orders: When the Commissioner or his authorized agent has reasonable cause to believe any lot of commercial feed is being distributed in violation of any of the provisions of this Article or of any of the prescribed regulations under this Article, he may issue and enforce a written or printed

"withdrawal from distribution" order, ordering the distributor not to dispose of the lot of commercial feed in any manner until written permission is given by the Commissioner or a court. The Commissioner shall release the lot of commercial feed so withdrawn when said provisions and regulations have been complied with. If compliance is not obtained within 30 days, the Commissioner may begin, or upon request of the distributor or registrant shall begin, proceedings for condemnation.

(b) "Condemnation and confiscation": Any lot of commercial feed not in compliance with said provisions and regulations shall be subject to seizure on complaint of the Commissioner to the superior court in the county in which said commercial feed is located. In the event the court finds the said commercial feed to be in violation of this Article, and orders the condemnation of said commercial feed, it shall be disposed of in any manner consistent with the quality of the commercial feed and the laws of the State, provided, that in no instance shall the disposition of said commercial feed be ordered by the court without first giving the claimant an opportunity to apply to the court for release of said commercial feed or for permission to process or relabel said commercial feed to bring it into compliance with this Article. All costs and expenses incurred by the Department of Agriculture in any proceedings associated with such seizure and confiscation shall be paid by the claimant. (1973, c. 771, s. 14.)

§ 106-284.44. Penalties; enforcement of Article; judicial review; confidentiality of information. — (a) Any person who shall be adjudged to have violated any provision of this Article, or any regulation of the Board adopted pursuant to this Article, shall be guilty of a misdemeanor, and for each violation shall be fined not less than one hundred dollars ($100.00) nor more than one thousand dollars ($1,000) or shall be imprisoned for not more than 60 days, or both. In addition, if any person continues to violate or further violates any provision of this Article after written notice from the Commissioner, or his duly designated agent, the court may determine that each day during which the violation continued or is repeated constitutes a separate violation subject to the foregoing penalties.

(b) Nothing in this Article shall be construed as requiring the Commissioner or his representative to: (i) report for prosecution, or (ii) institute seizure proceedings, or (iii) issue a withdrawal from distribution order, as a result of minor violations of the Article, or when he believes the public interest will best be served by suitable notice of warning in writing.

(c) It shall be the duty of each district attorney to whom any violation is reported to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay. Before the Commissioner reports a violation for such prosecution, an opportunity shall be given the distributor to present his view to the Commissioner or his designated agent.

(d) The Commissioner is hereby authorized to apply for and the court to grant a temporary restraining order and a preliminary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this Article or any rule or regulation promulgated under the Article notwithstanding the existence of other remedies at law.

(e) Any person adversely affected by an act, order, or ruling made pursuant to the provisions of this Article may within 30 days thereafter bring action in the Superior Court of Wake County for judicial review of such act, order or ruling according to the provisions of Chapter 150[A] of the General Statutes.

(f) Any person who uses to his own advantage, or reveals to other than the Board, or officers of the other State agencies whose requests are deemed justifiable by the Commissioner, or to the courts when relevant in any judicial proceeding, any information acquired under the authority of this Article, concerning any method, records, formulations, or processes which as a trade secret is entitled to protection, is guilty of a misdemeanor and shall be subject

upon conviction to the penalties contained in subsection (a) of this section; provided, that this prohibition shall not be deemed as prohibiting the Commissioner, or his duly authorized agent, from exchanging information of a regulatory nature with duly appointed officials of the United States government, or of the other states, who are similarly prohibited by law from revealing this information. (1973, c. 47, s. 2; c. 771, s. 15; c. 1331, s. 3.)

Editor's Note. — Pursuant to Session Laws 1973, c. 47, s. 2, "district attorney" has been substituted for "solicitor" in subsection (c).

Pursuant to Session Laws 1973, c. 1331, s. 3, effective July 1, 1975, the reference to Chapter 150[A] has been substituted for a reference to Article 33 of Chapter 143 in subsection (e).

§ 106-284.45. Cooperation with other entities. — The Commissioner may cooperate with and enter into agreements with governmental agencies of this State, other states, agencies of the federal government, and private associations in order to carry out the purpose and provisions of this Article. (1973, c. 771, s. 16.)

§ 106-284.46. Publication. — The Commissioner shall publish at least annually, in such forms as he may deem proper, information concerning the sales of commercial feeds, together with such data on their production and use as he may consider advisable, and a report of the results of the analyses of official samples of commercial feeds sold within the State as compared with the analyses guaranteed in the registration and on the label; provided, that the information concerning production and use of commercial feed shall not disclose the operations of any person. (1973, c. 771, s. 17.)

ARTICLE 32.

Linseed Oil.

§ 106-285. Inspection and analysis authorized. — For the purpose of protection of the people of the State from imposition by the fraudulent sale of adulterated or misbranded linseed oil or flaxseed oil as pure linseed oil or flaxseed oil, the Board of Agriculture shall cause inspection to be made from time to time and samples of such oil offered for sale in the State obtained, and shall cause the same to be analyzed or examined or tested by the oil chemist or other experts of the Department of Agriculture for the purpose of ascertaining or determining if same is adulterated or misbranded within the meaning of this Article or is otherwise offered for sale in violation of this Article. (1917, c. 172, s. 1; C. S., s. 4832.)

§ 106-286. Raw and boiled linseed oil defined. — The term "raw linseed oil" as used herein shall be construed to mean the oil obtained wholly from commercially pure linseed or flaxseed, and the term "boiled linseed oil" as used herein shall be construed to mean linseed oil that has been heated in the process of its manufacture to a temperature of not less than 225 degrees Fahrenheit. (1917, c. 172, s. 2; C. S., s. 4833.)

§ 106-287. Adulterated linseed oil defined. — For the purpose of this Article linseed oil shall be deemed to be adulterated if it be not wholly the product of commercially pure and well cleaned linseed or flaxseed, and unless the oil also fulfills the requirements of the chemical test for pure linseed oil, described in the edition of the United States Pharmacopoeia for the year 1900. (1917, c. 172, s. 3; C. S., s. 4834.)

§ 106-288. Sale of prohibited products; statement required of dealer. — No person, firm, or corporation, by himself or agent or as the agent of any other person, firm, or corporation, shall manufacture or mix for sale, sell, offer or expose for sale, or have in his possession with intent to sell under the name of raw linseed oil or boiled linseed oil, or under any name or device that suggests raw or boiled linseed oil. any article which is not wholly the product of commercially pure linseed or flaxseed, or that is adulterated or misbranded within the meaning of this Article, except as is hereinafter provided, and any manufacturer, wholesaler, or jobber desiring to do business in the State shall file with the Commissioner of Agriculture a statement to that effect and furnish the name of the oil or oils which he proposes to sell by sample or otherwise, and that the oil or oils will comply with the requirements of this Article. (1917, c. 172, s. 4; C. S., s. 4835.)

§ 106-289. Drying agents; label to state name and percentage. — Boiled linseed oil which has been heated to a temperature of not less than 225 degrees Fahrenheit may contain drying agents not to exceed four percent (4%) by volume, provided that the name and percent of each drying agent present be plainly stated in connection with the name of the oil on the receptacle containing same; and provided further, that the statement is printed in letters that meet the requirements of the regulations adopted by the Board of Agriculture under this Article. (1917, c. 172, s. 5; C. S., s. 4836.)

§ 106-290. Compounds, imitations, and substitutes regulated. — Nothing in this Article shall be construed to prohibit the sale of compound linseed oil, imitation linseed oil, or any substance to be used as a substitute for linseed oil, provided the receptacle containing same shall be plainly and legibly stamped, stenciled, or marked compound linseed oil, or imitation oil, or with the name of the substance to be used for linseed oil, as the case may be; and provided further, that the name is stenciled or marked on the container of same in a manner that will meet the requirements of the regulations adopted by the Board of Agriculture under this Article. (1917, c. 172, s. 6; C. S., s. 4837.)

§ 106-291. Containers to be marked with specified particulars. — Before any raw linseed oil or any boiled linseed oil or any boiled linseed oil with drying agents added or any compound linseed oil or any imitation linseed oil or any other substance used or intended to be used as a substitute for linseed oil shall be sold or offered for sale in this State, the container in which same is kept for sale or sold shall have distinctly, legibly, and durably painted, stamped, stenciled, or marked thereon the true name of such oil or substance, setting forth in boldface capital letters that meet the regulations prescribed by the Board of Agriculture, whether it be raw linseed oil or boiled linseed oil with drying agent added, or a compound linseed oil or an imitation linseed oil or a substitute for linseed oil, as the case may be; and the container, if a wholesale package, shall also bear the name and address of the manufacturer or jobber of such oil. (1917, c. 172, s. 7; C. S., s. 4838.)

§ 106-292. Entry for samples authorized. — The inspectors or agents of the Department of Agriculture, authorized to make inspection under this Article, shall have authority, during business hours, to enter all stores, warehouses, or any other place where products named in this Article are stored or sold or offered for sale, for the purpose of inspection and obtaining samples of such products. (1917, c. 172, s. 8; C. S., s. 4839.)

§ 106-293. Refusing samples or obstructing enforcement of Article forbidden. — Every person who offers for sale or delivers to a purchaser any article named in this Article shall furnish, within business hours and upon the payment or tender of the selling price, a sample of such product to any person

duly authorized to secure the same, and who shall apply to such vender for such sample of such article in his possession; and any dealer or vender who refuses to comply, upon demand, with the requirements of this section, or any person who shall impede, hinder, or obstruct or otherwise prevent or attempt to prevent any chemist, inspector, or agent of the Department in the performance of his duty in connection with this Article, shall be guilty of a violation of this Article. (1917, c. 172, s. 8; C. S., s. 4840.)

§ 106-294. Violations of Article a misdemeanor. — Any person who shall violate any of the provisions of this Article shall be guilty of a misdemeanor, and for such offense, upon conviction thereof, shall be fined not exceeding one hundred dollars ($100.00) for the first offense and for each subsequent offense in the discretion of the court. (1917, c. 172, s. 9; C. S., s. 4841.)

§ 106-295. Forfeiture for unauthorized offer; disposal of proceeds. — The oil offered for sale in violation of this Article shall be subject to seizure, condemnation, and sale by the Commissioner of Agriculture, as is provided for the seizure, condemnation, and sale of commercial fertilizer; and the proceeds thereof, if sold, less the legal cost and charges, shall be paid into the treasury for the use of the Department of Agriculture in executing the provisions of this Article. (1917, c. 172, s. 9; C. S., s. 4842.)

§ 106-296. Commissioner to notify district attorney of violations and certify facts. — If it shall appear from the inspection or other examination of oils that any of the provisions of this Article have been violated, besides the action above provided for, the Commissioner of Agriculture shall certify the facts to the district attorney in the district in which the violation was committed, and furnished the officer with the facts in the case, duly authenticated by the expert, under oath, who made the examination. (1917, c. 172, s. 10; C. S., s. 4843; 1973, c. 47, s. 2.)

Editor's Note. — The 1973 amendment substituted "district attorney" for "solicitor."

§ 106-297. District attorney to prosecute. — It shall be the duty of the district attorney to prosecute such cases for fines and penalties provided for in this Article in courts of competent jurisdiction. (1917, c. 172, s. 10; C. S., s. 4844; 1973, c. 47, s. 2.)

Editor's Note. — The 1973 amendment substituted "district attorney" for "solicitor."

§ 106-298. Inspection tax. — For the purpose of defraying expenses incurred in the enforcement of the provisions of this Article there shall be paid to the Commissioner of Agriculture an inspection tax of one-half cent (1/2¢) per gallon for any and all linseed oil or compound linseed oil or any substance used or intended to be used as a substitute for linseed oil, which payment shall be made before the delivery of such oil to any agent, retail dealer, or consumer in this State. (1917, c. 172, s. 11; C. S., s. 4845.)

§ 106-299. Tax tags. — Each can, barrel, tank, or other container of oils named in this Article shall have attached thereto an inspection tag or stamp stating that the inspection charges specified in this Article have been paid; and the Commissioner of Agriculture, with the advice and consent of the Board, is hereby authorized to prescribe a form for such tags or stamps: Provided, that they shall be such as to meet the requirements of the trade of linseed oil. (1917, c. 172, s. 11; C. S., s. 4846.)

§ 106-300. Refilling containers and misuse of tags prohibited. — The refilling of a container bearing an inspection tag or stamp on which the inspection tax has not been paid or the use of an inspection tax or stamp a second time shall constitute a violation of this Article. (1917, c. 172, s. 12; C. S., s. 4847.)

§ 106-301. Rules to enforce Article; misdemeanor. — The Board of Agriculture is hereby authorized to adopt such rules and regulations in regard to handling linseed oil, refilling containers, and use of inspection tags or stamps a second time, as will insure the enforcement of the provisions of this Article, and a violation of the said rules or regulations shall constitute a violation of this Article. (1917, c. 172, s. 13; C. S., s. 4848.)

§ 106-302. Dealer released by guaranty of wholesaler. — No dealer shall be prosecuted under the provisions of this Article when he can establish a guaranty signed by the manufacturer, jobber, wholesaler, or other party from whom he purchased such article, designating it, to the effect that the same is not adulterated or misbranded within the meaning of this Article. Said guaranty, to afford protection, shall contain the name and address of the party or parties making the sale of such article to such dealer, and in such cases said party or parties, if in this State, shall be amenable to the prosecutions, fines, and other penalties which would attach, in due course, to the dealer under the provisions of this Article: Provided, that the above guaranty shall not afford protection to any dealer after the first offense in connection with a product from a particular manufacturer, jobber, or wholesaler, or for the sale of oil which is not properly labeled, branded, stamped, or tagged, or on which the inspection tax has not been paid. (1917, c. 172, s. 14; C. S., s. 4849.)

ARTICLE 33.

Adulterated Turpentine.

§ 106-303. Sale of adulterated turpentine misdemeanor. — If any person shall adulterate or cause to be adulterated any spirits turpentine, or shall knowingly sell or offer for sale as pure spirits turpentine any adulterated spirits turpentine, he shall be guilty of a misdemeanor, and upon conviction shall be fined not less than fifty dollars ($50.00) or imprisoned for 30 days. (1897, c. 482; Rev., s. 3830; C. S., s. 5089.)

ARTICLE 34.

Animal Diseases.

Part 1. Quarantine and Miscellaneous Provisions.

§ 106-304. Proclamation of livestock and poultry quarantine. — Upon the recommendation of the Commissioner of Agriculture, it shall be lawful for the Governor to issue his proclamation forbidding the importation into this State of any and all kinds of livestock and poultry from any state where there is known to prevail contagious or infectious diseases among the livestock and poultry of such state. (1915, c. 174, s. 1; C. S., s. 4871; 1969, c. 606, s. 1.)

§ 106-305. Proclamation of infected feedstuff quarantine. — Upon the recommendation of the Commissioner of Agriculture, it shall be lawful for the Governor to issue his proclamation forbidding the importation into this State of any feedstuff or any other article or material dangerous to livestock and poultry as a carrier of infectious or contagious disease from any area outside the State. This shall also include any and all materials imported for manufacturing purposes or for any other use, which have been tested by any state or federal

agency competent to make such tests and found to contain living infectious and contagious organisms known to be injurious to the health of man, livestock and poultry. (1915, c. 174, s. 2; C. S., s. 4872; 1953, c. 1328; 1969, c. 606, s. 1.)

§ 106-306. Rules to enforce quarantine. — Upon such proclamation being made, the Commissioner of Agriculture shall have power to make rules and regulations to make effective the proclamation and to stamp out such infectious or contagious diseases as may break out among the livestock and poultry in this State. (1915, c. 174, s. 3; C. S., s. 4873; 1969, c. 606, s. 1.)

Cross Reference. — See § 106-22(3).

Cattle Ticks. — The regulation of a quarantine district laid off and enforced in pursuance of § 106-22(3), and this section, for the eradication of ticks on cattle is a reasonable and valid regulation. State v. Hodges, 180 N.C. 751, 105 S.E. 417 (1920).

§ 106-307. Violation of proclamation or rules. — Any person, firm, or corporation violating the terms of the proclamation of the Governor, or any rule or regulation made by the Commissioner of Agriculture in pursuance thereof, shall be guilty of a misdemeanor and fined not in excess of five hundred dollars ($500.00) or imprisoned up to six months, or both fined and imprisoned, in the discretion of the court. (1915, c. 174, s. 4; C. S., s. 4874; 1969, c. 606, s. 1.)

§ 106-307.1. Serums, vaccines, etc., for control of animal diseases. — The North Carolina Department of Agriculture is authorized and empowered to purchase for resale serums, viruses, vaccines, biologics, and other products for the control of animal and poultry diseases. The resale of said serums, viruses, vaccines, biologics and other products shall be at a reasonable price to be determined by the Commissioner of Agriculture. (1943, c. 640, s. 1; 1969, c. 606, s. 1.)

Editor's Note. — For comment on this section and §§ 106-307.2 to 106-307.6, see 21 N.C.L. Rev. 323.

§ 106-307.2. Reports of infectious disease in livestock and poultry to State Veterinarian. — All persons practicing veterinary medicine in North Carolina shall report promptly to the State Veterinarian the existence of any contagious or infectious disease in livestock and poultry. (1943, c. 640, s. 2; 1969, c. 606, s. 1.)

§ 106-307.3. Quarantine of infected or inoculated livestock. — Hog cholera and other contagious and infectious diseases of livestock are hereby declared to be a menace to the livestock industry and all livestock infected with or exposed to a contagious or infectious disease may be quarantined by the State Veterinarian or his authorized representative in accordance with regulations promulgated by the State Board of Agriculture. All livestock that are inoculated with a product containing a living virus or other organism are subject to quarantine at the time of inoculation in accordance with regulations promulgated by the State Board of Agriculture: Provided, nothing herein contained shall be construed as preventing anyone entitled to administer serum or vaccine under existing laws from continuing to administer same. (1943, c. 640, s. 3; 1969, c. 606, s. 1.)

Cross Reference. — See § 106-401.

§ 106-307.4. Quarantine of inoculated poultry. — All poultry that are inoculated with a product containing a living virus or other organism capable of causing disease shall be quarantined at the time of inoculation in accordance with regulations promulgated by the State Board of Agriculture. Provided nothing herein contained shall be construed as preventing anyone entitled to administer vaccines under existing laws from continuing to administer same. (1969, c. 606, s. 1.)

Cross Reference. — See § 106-400.

Validity of Regulations. — Regulations relating to the importation of cattle, promulgated under authority of this section for the purpose of control of brucellosis or Bang's disease, if reasonable in their scope and incidence and not in conflict with federal regulations or statutes already preempting the field, are constitutional and valid. State v. Lovelace, 228 N.C. 186, 45 S.E.2d 48 (1947).

A provision in the regulations promulgated under authority of this section, limiting the exception to the requirement of a health certificate for imported cattle solely to those consigned to a slaughterhouse, is reasonable and valid. State v. Lovelace, 228 N.C. 186, 43 S.E.2d 48 (1947).

§ 106-307.5. Livestock and poultry brought into State. — All livestock and poultry transported or otherwise brought into this State shall be in compliance with regulations promulgated by the State Board of Agriculture. (1943, c. 640, s. 4; 1969, c. 606, s. 1.)

§ 106-307.6. Violation made misdemeanor. — Any person, firm or corporation who shall violate any provisions set forth in G.S. 106-307.1 to G.S. 106-307.5 or any rule or regulation duly established by the State Board of Agriculture shall be guilty of a misdemeanor and shall be fined not in excess of five hundred dollars ($500.00) or imprisoned up to six months, or both fined and imprisoned, in the discretion of the court. (1943, c. 640, s. 6; 1969, c. 606, s. 1.)

Applied in State v. Lovelace, 228 N.C. 186, 45 S.E.2d 48 (1947).

§ 106-307.7. Diseased livestock running at large. — Whenever the State Veterinarian is informed or reasonably believes that certain livestock is infected with or has been exposed to any contagious or infectious disease, that such livestock is running at large and that such livestock cannot be captured with the exercise of reasonable diligence, the State Veterinarian shall have authority to direct the appropriate sheriff or other proper officer to destroy such livestock in a reasonable manner and such sheriff or other officer shall make diligent effort to destroy such livestock. (1971, c. 676.)

Part 2. Foot and Mouth Disease; Rinderpest; Fowl Pest; Newcastle Disease.

§ 106-308. Appropriation to combat animal and fowl diseases. — If the foot and mouth disease, rinderpest (cattle plague), fowl pest, or Newcastle disease (Asiatic or European types), or any other type of foreign infectious disease which may become a menace to livestock and poultry and so declared to be by the Secretary of Agriculture of the United States, Chief of the United States Bureau of Animal Industry and the Commissioner of Agriculture of North Carolina, seem likely to appear in this State and an emergency as to such disease or diseases is declared by the Secretary of Agriculture of the United States, or his authorized agents, and the North Carolina Department of Agriculture has no funds available to immediately meet the situation in cooperation with the United States Department of Agriculture, the Director of the Budget, upon approval

of the Governor and Council of State, shall set aside, appropriate and make available out of the Contingency and Emergency Fund such sum as the Governor and Council of State shall deem proper and necessary, and the Budget Bureau shall place said funds in an account to be known as the Animal and Fowl Disease Appropriation and make same available to the North Carolina Department of Agriculture, to be used by the North Carolina Department of Agriculture in the work of preventing or eradicating the above diseases, or any of them. Funds from the above appropriation shall be paid only for work in this connection upon warrants approved by the Commissioner of Agriculture. The provisions of Part 4 of Article 34 of Chapter 106 of the General Statutes relating to the compensation for killing diseased animals shall be applicable to animals infected with or exposed to the diseases named and described in this section, as well as to the destruction of material contaminated by or exposed to the diseases described in this section, as well as the necessary cost of the disinfection of materials. In no event shall any of the above appropriation be spent for the purposes set forth in this section unless the funds appropriated by this State are matched in an equal amount by the federal government or one of its agencies to be spent for the same purposes. (1915, c. 160, s. 1; C. S., s. 4875; 1951, c. 799.)

Editor's Note. — All of the functions, property, records, etc., of the Budget Bureau have been transferred by § 143-344 to the Department of Administration.

§ 106-309. Disposition of surplus funds. — If said disease shall have appeared and shall have been eradicated and work is no longer necessary in connection with it, the State Treasurer shall return such part of the appropriation as is not expended to the general fund, and the Commissioner of Agriculture shall furnish the Governor an itemized statement of the money expended, and all moneys set aside out of the State funds and used for the purpose of eradicating said disease under the provisions of this Article shall be paid back to the State funds by the Department of Agriculture out of the first funds received by said agricultural Department available for such purpose. (1915, c. 160, s. 2; C. S., c. 4876.)

Part 3. Hog Cholera.

§ 106-310. Burial of hogs dying natural death required. — It shall be the duty of every person, firm, or corporation who shall lose a hog by any form of natural death to have the same buried in the earth to a depth of at least two feet within 12 hours after the death of the animal. Any person, firm, or corporation that shall fail to comply with the terms of this section shall be guilty of a misdemeanor, and shall be fined not less than five dollars ($5.00) nor more than ten dollars ($10.00) for each offense, at the discretion of the court. (1915, c. 225; C. S., s. 4877.)

§ 106-311. Hogs affected with cholera to be segregated and confined. — If any person having swine affected with the disease known as hog cholera, or any other infectious or contagious disease, who discovers the same, or to whom notice of the fact shall be given, shall fail or neglect for one day to secure the diseased swine from the approach of or contact with other hogs not so affected, by penning or otherwise securing and effectually isolating them so that they shall not have access to any ditch, canal, branch, creek, river or other watercourse which passes beyond the premises of the owners of such swine, he shall be guilty of a misdemeanor, and upon conviction shall be fined not exceeding fifty dollars ($50.00) or imprisoned not exceeding 30 days. (1889, c. 173, s. 1; 1891, c. 67, ss. 1, 3; 1899, c. 47; 1903, c. 106; Rev., s. 3297; 1913, c. 120; C. S., s. 4490.)

Cross Reference. — See § 106-402.

§ 106-312. Shipping hogs from cholera-infected territory. — It shall be unlawful for any person, firm or corporation in any district or territory infected by cholera to bring, carry, or ship hogs into any stock-law section or territory, unless such hogs have been certified to be free from cholera either by the farm demonstration agent of the county or some other suitable person to be designated by the clerk of the superior court. Any violation of this section shall constitute a misdemeanor. (1917, c. 203; C. S., s. 4491.)

§ 106-313. Price of serum to be fixed. — The Department of Agriculture shall fix the price of anti-hog-cholera serum at such an amount as will cover the cost of production. (1917, c. 275, s. 1; 1919, c. 6; C. S., s. 4878.)

Cross Reference. — As to purchase for resale by Department of Agriculture, see § 106-307.1.

§ 106-314. Manufacture and use of serum and virus restricted. — It shall be unlawful for any person, firm, or corporation to distribute, sell, or use in the State anti-hog-cholera serum unless said anti-hog-cholera serum is produced at the serum plant of the State Department of Agriculture, or produced in a plant which is licensed by the Biological Products Licensing Section, Animal Inspection and Quarantine Division, Agricultural Research Service of the United States Department of Agriculture, allowing said plant to do an interstate business.

It shall be unlawful for any person, firm, or corporation to distribute, sell, or use in the State of North Carolina, virulent blood from hog-cholera-infected hogs, or virus, unless said virulent blood, or virus, is produced at the serum plant of the State Department of Agriculture or produced in a plant which is licensed by the Biological Products Licensing Section, Animal Inspection and Quarantine Division, Agricultural Research Service of the United States Department of Agriculture, allowing said plant to do an interstate business. No virulent blood from hog-cholera-infected hogs, or virus, shall be distributed, sold or used in the State unless and until permission has been given in writing by the State Veterinarian for such distribution, sale or use. Said permission to be cancelled by the State Veterinarian when necessary.

Any person, firm, or corporation guilty of violating the provisions of this section or failing or refusing to comply with the requirements thereof shall be guilty of a misdemeanor. (1915, c. 88; 1919, c. 125, ss. 1, 2, 3; C.S., s. 4879; 1959, c. 576, s. 1.)

Local Modification. — Currituck: 1943, c. 199; Edgecombe: 1933, c. 139; Hyde: 1943, c. 693; Nash: 1935, cc. 67, 222; Pasquotank: 1943, c. 358; Pitt: 1935, c. 352; Tyrrell: 1943, c. 693; Wilson: 1933, c. 58.

Cross Reference. — As to purchase for resale by Department of Agriculture, see § 106-307.1.

§ 106-315. Written permit from State Veterinarian for sale, use or distribution of hog-cholera virus, etc. — No hog-cholera virus or other product containing live virus or organisms of animal diseases shall be distributed, sold, or used within the State unless permission has been given in writing by the State Veterinarian for such distribution, sale, or use, said permission to be canceled by the State Veterinarian when he deems same necessary. (1939, c. 360, s. 5; 1959, c. 576, s. 2.)

Local Modification. — Currituck: 1943, c. 199; Hyde: 1943, c. 693; Pasquotank: 1943, c. 358; Tyrrell: 1943, c. 693.

§ 106-316. Counties authorized to purchase and supply serum. — If the county commissioners of any county in the State deem it necessary to use anti-hog-cholera serum to control or eradicate the disease known as hog cholera, they are authorized within their discretion to purchase from the State Department of Agriculture sufficient anti-hog-cholera serum and virus for use in their county and supply same free of cost to the residents of the county, or pay for any portion of the cost of said serum, the remaining portion to be paid by the owners of the hogs.

The use of anti-hog-cholera serum and virus and the quarantine of diseased animals shall remain under the supervision of the State Veterinarian.

Nothing in this section shall in any way interfere with existing laws and regulations covering the use of anti-hog-cholera serum and virus and the quarantine and control of contagious diseases, or any laws or regulations that may become necessary in the future. (1919, c. 132; C. S., s. 4881.)

§ 106-316.1. Purpose of §§ 106-316.1 to 106-316.5. — It is the purpose and intent of G.S. 106-316.1 to 106-316.5 to safeguard the swine industry in North Carolina through a program designed to prevent the spread of hog cholera by prohibiting and restricting the use of virulent hog-cholera virus; to provide for the use of modified live virus hog-cholera vaccines that have been licensed as such by the Biological Products Licensing Section, Animal Inspection and Quarantine Division, Agricultural Research Service of the United States Department of Agriculture; to empower the State Board of Agriculture to establish rules and regulations and the Commissioner of Agriculture to establish emergency rules and regulations governing the movement of hogs into the State from other states and within the State; to establish rules and regulations designating the minimum dosage of anti-hog-cholera serum and antibody concentrate that shall be used in combination with modified live-virus hog-cholera vaccines on swine vaccinated at public livestock markets and other places; and to establish such other rules and regulations and emergency rules and regulations as may be necessary for carrying out the purposes of G.S. 106-316.1 to 106-316.5. (1955, c. 824, s. 1; 1959, c. 576, s. 3.)

Editor's Note. — Section 106-316.5, referred to above, was repealed by Session Laws 1963, c. 1084, s. 2.

§ 106-316.2. Use of virulent hog-cholera virus prohibited without permit; virulent hog-cholera virus defined; use of modified live virus vaccines. — Notwithstanding any other provision of the law, either general, public-local, special or private, and except as herein provided, the possession, sale and use of virulent hog-cholera virus in North Carolina is hereby prohibited. Virulent hog-cholera virus referred to in this section means any unattended hog-cholera virus collected directly or indirectly from blood or other tissues of swine infected with hog cholera which has not been licensed as a modified live virus hog-cholera vaccine. The State Veterinarian may issue a permit authorizing the sale, possession and use of virulent hog-cholera virus only for the purpose of laboratory diagnosis; official research programs; production of anti-hog-cholera serum, antibody concentrate, modified live virus, killed virus vaccine, and similar biological products; and following a declaration that a state of emergency exists in a designated quarantined hog-cholera area or areas within the State by the Commissioner of Agriculture of North Carolina. The use of virulent hog-cholera

virus during a declared state of emergency shall be under the direct supervision of the State Veterinarian or his authorized representative. Modified live-virus hog-cholera vaccines that have been licensed as such by the Biological Products Licensing Section, Animal Inspection and Quarantine Division, Agricultural Research Service of the United States Department of Agriculture may be sold and used in compliance with the General Statutes of North Carolina and the rules, regulations, definitions and standards adopted by the North Carolina Board of Agriculture and the emergency rules and regulations established by the Commissioner of Agriculture. (1955, c. 824, s. 2; 1959, c. 576, s. 4.)

§ 106-316.3. Unlawful to import hogs inoculated with virulent virus; exceptions for immediate slaughter; health certificate and permit required. — It shall be unlawful to bring hogs into North Carolina that have been inoculated with virulent hog-cholera virus less than 30 days prior to the date of entry, except for immediate slaughter, and in addition thereto the transportation or importation of such hogs that have been inoculated with virulent hog-cholera virus must be accompanied by the health certificate and permit as required by the rules and regulations of the North Carolina Board of Agriculture or emergency rules and regulations of the North Carolina Commissioner of Agriculture. The provisions of this section shall not be construed to be in conflict with or to repeal any provisions of G.S. 106-317 through G.S. 106-322 or any other statute or rule or regulation prohibiting, restricting or controlling the interstate movement of hogs for other reasons. (1955, c. 824, s. 3; 1959, c. 576, s. 5.)

§ 106-316.4. Penalties for violation of §§ 106-316.1 to 106-316.5. — Any person, firm or corporation violating the provisions of G.S. 106-316.1 to 106-316.5 shall be guilty of a misdemeanor, and upon the first conviction shall be fined not less than fifty dollars ($50.00) or imprisoned in the discretion of the court. For a second offense, any such violator shall be fined not less than two hundred dollars ($200.00) or imprisoned in the discretion of the court, or both. (1955, c. 824, s. 4.)

Editor's Note. — Section 106-316.5, referred to above, was repealed by Session Laws 1963, c. 1084, s. 2.

§ 106-316.5: Repealed by Session Laws 1963, c. 1084, s. 2.

§ 106-317. Regulation of the transportation or importation of hogs and other livestock into State. — To prevent the spread of hog cholera, vesicular exanthema, vesicular stomatitis, foot-and-mouth disease, or any other contagious, infectious and communicable swine disease in North Carolina, the North Carolina Board of Agriculture is authorized and empowered to promulgate rules and regulations governing the transportation and importation of swine into North Carolina from any other state or territory: Provided, that following a proclamation by the Secretary of Agriculture of the United States and the Commissioner of Agriculture of North Carolina that a state of emergency exists, arising from the existence of a dangerous contagious and infectious disease of livestock which threatens the livestock industry of the country, the North Carolina Commissioner of Agriculture is empowered and authorized to immediately promulgate emergency rules and regulations governing the movement of swine and other livestock within the State and prohibiting, restricting and/or controlling the transportation and importation of swine and other livestock into North Carolina for the duration of the emergency. The emergency rules and regulations promulgated by the North Carolina Commissioner of Agriculture shall be subject to approval, disapproval or change at the next regular or special meeting of the North Carolina Board of

Agriculture. The North Carolina Board of Agriculture under the authority of this section may by regulation establish a system of health certificates and permits for the better protection of the swine and livestock of this State. (1941, c. 373, s. 1; 1955, c. 424, s. 1.)

§ 106-318. Issuance of health certificates for swine and livestock; inspection. — Such health certificates that may be required under the rules and regulations by the Board of Agriculture or the emergency rules and regulations of the Commissioner of Agriculture shall be issued by a State, federal or duly licensed veterinarian in the state of origin certifying that the swine or other livestock transported and imported are healthy and not infected with or exposed to a contagious, infectious or communicable swine or other livestock disease, and all permits required under such rules and regulations shall be in possession of the owner or agent in charge, at all times until delivery of such swine or other livestock, and upon request, the owner or agent in charge shall produce said required certificate and permit for inspection by any police or peace officer or inspection agent of this State or any county thereof. The burden shall be on the person transporting said swine or other livestock to prove the origin, identity and destination of such swine and other livestock. (1941, c. 373, s. 2; 1955, c. 424, s. 2.)

§ 106-319. Burial of hogs and other livestock dying in transit. — It shall be the duty of any owner or agent having in charge any swine or other livestock imported or transported into this State who shall, before delivery lose a hog or other livestock from natural or unnatural death to have the same delivered to a rendering plant or buried in the area to a depth of at least two feet within 12 hours after death of said swine or other livestock. (1941, c. 373, s. 3; 1955, c. 424, s. 3.)

§ 106-320: Repealed by Session Laws 1963, c. 1084, s. 2.

§ 106-321. Penalties for violation. — Any person, firm or corporation who shall violate any provision set forth in this Article or any rule or regulation duly established by the State Board of Agriculture or emergency rules and regulations established by the Commissioner of Agriculture shall be guilty of a misdemeanor and shall be fined or imprisoned, or both, in the discretion of the court. (1941, c. 373, s. 5; 1955, c. 424, s. 4.)

§ 106-322. Effect of §§ 106-317 to 106-322. — Sections 106-317 to 106-322 shall not repeal Article 34, Chapter 106, but shall be complementary thereto. (1941, c. 373, s. 6.)

§ 106-322.1. State-federal hog-cholera cooperative agreements; establishment of hog-cholera eradication areas. — The Commissioner of Agriculture is authorized to enter into cooperative State-federal agreements with the United States Department of Agriculture for the purpose of State-federal programs for the control and eradication of hog cholera. The Commissioner of Agriculture may designate individual counties or two or more counties as hog-cholera eradication areas. (1963, c. 1084, s. 1.)

§ 106-322.2. Destruction of swine affected with or exposed to hog cholera; indemnity payments. — If it appears in the judgment of the State Veterinarian to be necessary for the control and eradication of hog cholera to destroy or slaughter swine affected with or exposed to such disease, the State Veterinarian is authorized to order said swine destroyed or slaughtered, notwithstanding the wishes of the owners of said swine, provided that if the owner contests the diagnosis of hog cholera he shall be entitled to a review of the case by a licensed practicing veterinarian, the State Veterinarian, or his authorized representative, and the federal inspector in charge, or his authorized representative, to

determine that a diagnosis of hog cholera was arrived at by the use of accepted, standard diagnostic techniques. The State Veterinarian is authorized to agree on the part of the State, in the case of swine destroyed or slaughtered on account of being affected with hog cholera or exposure to same to pay one half of the difference between the appraised value of each animal destroyed or slaughtered and the value of the salvage thereof; provided, that the State indemnity shall not be in excess of the indemnity payments made by the federal cooperating agency; provided further, that State indemnity payments shall be restricted to swine located on the farm or feedlot of the owner or authorized representative of the owner; provided further, that in no case shall any payments by the State be more than twenty-five dollars ($25.00) for any grade swine nor more than one hundred dollars ($100.00) for any purebred swine and subject to available State funds. The procedure for appraisal, disposal and salvage of slaughtered or destroyed swine shall be carried out in the same manner as that required under the General Statutes of North Carolina governing compensation for killing other diseased animals provided, however, that the appraisal may be made by the owner, or his representative, and the State Veterinarian, or his authorized representative, when agreement on the appraised value of the swine can be made; provided, further, that swine which entered the State 30 days or more before developing symptoms of hog cholera may be appraised in the same manner as swine which originate in North Carolina.

For the purposes of this section, "purebred swine" shall mean any swine upon which a certificate of pure breeding has been issued by a purebred swine association, or swine not more than 12 months of age eligible to receive such a certificate. (1963, c. 1084, s. 1; 1967, c. 105; 1969, c. 525, ss. 1, 2.)

§ 106-322.3. When indemnity payments not to be made. — No payments shall be made for any swine slaughtered in the following cases:

(1) If the owner does not clean up and disinfect premises as directed by an inspector of the Animal Health Division, Agricultural Research Service, United States Department of Agriculture or the State Veterinarian or his authorized representative;
(2) Where the owner has not complied with the livestock disease control laws and regulations applicable to hog cholera;
(3) For swine in a herd in which hog-cholera vaccine has been used illegally on one or more animals in the herd;
(4) Swine involved in an outbreak in which the existence of hog cholera has not been confirmed by the State Veterinarian or his authorized representative;
(5) Swine belonging to the United States or the State of North Carolina;
(6) Swine brought into the State in violation of State laws or regulations;
(7) Swine which the claimant knew to be affected with hog cholera, or had notice thereof, at the time they came into his possession;
(8) Swine which have not been within the State of North Carolina for at least 30 days prior to discovery of the disease;
(9) Where the owner does not use reasonable care in protecting swine from exposure to hog cholera;
(10) Where the owner has failed to submit the reports required by the United States and North Carolina Departments of Agriculture for animals on which indemnity is paid under Article 34;
(11) Swine purchased by a buying station for slaughter which are not slaughtered within 10 days of purchase. (1969, c. 525, s. 2½.)

Part 4. Compensation for Killing Diseased Animals.

§ 106-323. State to pay part of value of animals killed on account of disease; purchase by State of animals exposed to certain diseases. — If it appears to be necessary for the control or eradication of Bang's disease and tuberculosis and paratuberculosis in cattle, or glanders in horses and mules, to destroy such animals affected with such diseases and to compensate owners for loss thereof, the State Veterinarian is authorized, within his discretion, to agree on the part of the State, in the case of cattle destroyed for Bang's disease and tuberculosis, and paratuberculosis to pay one third of the difference between the appraised value of each animal so destroyed and the value of the salvage thereof: Provided, that in no case shall any payment by the State be more than twenty-five dollars ($25.00) for any grade animal nor more than one hundred dollars ($100.00) for any purebred animal; provided further, that the State indemnity shall not be in excess of the indemnity payments made by the federal government. In the case of horses or mules destroyed for glanders, to pay one half of the appraised value, said half not to exceed one hundred dollars ($100.00).

The State Veterinarian is also authorized, in his discretion, and subject to the maximum payment hereinabove provided, to purchase in the name of the State, cattle which have been exposed to Bang's disease, tuberculosis or paratuberculosis and horses and mules which have been exposed to glanders. (1919, c. 62, s. 1; C. S., s. 4882; 1929, c. 107; 1939, c. 272, ss. 1, 2; 1969, c. 525, s. 3; 1973, c. 1122.)

Cross References. — As to indemnity for swine destroyed on account of being affected by hog cholera, see § 106-322.2. As to provision that failure to kill animal affected with glanders constitutes a misdemeanor, see § 106-404.

Editor's Note. — The 1973 amendment added the second paragraph.

§ 106-324. Appraisal of cattle affected with Bang's disease and tuberculosis. — Cattle affected with Bang's disease and tuberculosis and paratuberculosis shall be appraised by three men — one to be chosen by the owner, one by the United States Bureau of Animal Industry, and one by the State Veterinarian. If the United States Bureau of Animal Industry is not represented, then the appraisers shall be chosen, one by the owner, one by the State Veterinarian, the third to be chosen by the first two named. The finding of such appraisers shall be final. (1919, c. 62, s. 2; C. S., s. 4883; 1929, c. 107; 1939, c. 272, s. 1.)

§ 106-325. Appraisal of animals affected with glanders; report. — Animals affected with glanders shall be appraised by three men — one to be chosen by the owner, one to be chosen by the State Veterinarian, the third to be named by the first two chosen, the finding of such appraisers to be final. The report of appraisal to be made in triplicate on forms furnished by the State Veterinarian, and a copy sent to the State Veterinarian at once. (1919, c. 62, s. 3; C. S., s. 4884.)

§ 106-326. Report of appraisal of cattle affected with Bang's disease and tuberculosis to State Veterinarian; contents. — Appraisals of cattle affected with Bang's disease or tuberculosis shall be reported on forms furnished by the State Veterinarian, which shall show the number of animals, the appraised value of each per head, or the weight and appraised value per pound, and shall be signed by the owners and the appraisers. This report must be made in triplicate and a copy sent to the State Veterinarian: Provided, that the State Veterinarian may change the forms for making claims so as to conform to the claim forms used by the United States Department of Agriculture. (1919, c. 62, s. 4; C. S., s. 4885; 1939, c. 272, ss. 1, 3.)

§ 106-327. Marketing of cattle affected with Bang's disease and tuberculosis. — Each owner of cattle affected with Bang's disease or tuberculosis, which have been appraised, and which have been authorized by the State Veterinarian to be marketed, shall market the cattle within 30 days and shall obtain from the purchaser a report in triplicate. One copy to be sent by the State Veterinarian at once, certifying as to the amount of money actually paid for the animals, all animals to be identified on report. (1919, c. 62, s. 5; C. S., s. 4886; 1939, c. 272, s. 1.)

§ 106-328. Report on salvage. — When the appraised cattle have been slaughtered and the amount of salvage ascertained, a report, on forms furnished by the State Veterinarian, in triplicate shall be made, signed by the owner and the United States Bureau of Animal Industry or State inspector and the appraisers by which the animals were appraised and destroyed, showing the difference between the appraised value and salvage. Two copies are to be attached to the voucher in which compensation is claimed, and one copy to be furnished by the owner of cattle. (1919, c. 62, s. 6; C. S., s. 4887.)

§ 106-329. Compensation when killing ordered. — Compensation for animals destroyed on account of glanders will only be paid when such destruction is ordered by the State Veterinarian or his authorized representative. When the owner of the animals presents his claim he shall support same with the original report of the appraiser, together with the report of the inspector who destroyed the animal, to the State Veterinarian. (1919, c. 62, s. 7; C. S., s. 4888.)

§ 106-330. Ownership of destroyed animals; outstanding liens. — When animals have been destroyed pursuant to this Article the inspector shall take reasonable precautions to determine, prior to his approval of vouchers in which compensation is claimed, who is the owner of and whether there are any mortgages or other liens outstanding against the animals. If it appears that there are outstanding liens, a full report regarding same shall be made and shall accompany the voucher. Every such report shall include a description of the liens, the name of the person or persons having possession of the documentary evidence, and a statement showing what arrangements, if any, have been made to discharge the liens outstanding against the animals destroyed of which the inspector may have knowledge. (1919, c. 62, s. 8; C. S., s. 4889.)

§ 106-331. State not to pay for feed of animals ordered killed. — Expense for the care and feeding of animals held for slaughter shall not be paid by the State. (1919, c. 62, s. 9; C. S., s. 4890.)

§ 106-332. Disinfection of stockyards by owners. — Stockyards, pens, cars, vessels and other premises and conveyances will be disinfected whenever necessary for the control and eradication of disease by the owners at their expense under the supervision of an inspector of the United States Bureau of Animal Industry or State Veterinarian. (1919, c. 62, s. 10; C. S., s. 4891.)

§ 106-333. Payments made only on certain conditions. — No payments shall be made for any animal slaughtered in the following cases:

(1) If the owner does not disinfect premises, etc., as directed by an inspector of the United States Bureau of Animal Industry or the State Veterinarian.
(2) For any animals destroyed where the owner has not complied with all lawful quarantine regulations.
(3) Animals reacting to a test not approved by the State Veterinarian.
(4) Animals belonging to the United States.
(5) Animals brought into the State in violation of the State laws and regulations.

(6) Animals which the owner or claimant knew to be diseased, or had notice thereof, at the time they came into his possession.
(7) Animals which had the disease for which they were slaughtered or which were destroyed by reason of exposure to the disease, at the time of their arrival in the State.
(8) Animals which have not been within the State of North Carolina for at least 120 days prior to the discovery of the disease.
(9) Where owner does not use reasonable care in protecting animals from disease.
(10) Where owner has failed to submit the necessary reports as required by this Article.
(11) Any unregistered bull. (1919, c. 62, s. 11; C. S., s. 4892; 1939, c. 272, s. 4.)

§ 106-334. Owner's claim for indemnity supported by reports. — The owner must present his claim for indemnity to the State Veterinarian for approval, and the claim shall be supported with the original report of the appraisers, the original report of the sale of the animals in the case of cattle destroyed on account of Bang's disease and tuberculosis, the certificate of the State or United States Bureau of Animal Industry inspector, and a summary of the claim. All of which shall constitute a part of the claim.

The owner must state whether or not the animals are owned entirely by him or advise fully of any partnership, and describe fully any mortgages or other liens against animals. (1919, c. 62, s. 12; C. S., s. 4893; 1939, c. 272, s. 1.)

§ 106-335. State Veterinarian to carry out provisions of Article; how moneys paid out. — The State Veterinarian is authorized, himself or by his representative, to do all things specified in this Article. All moneys authorized to be paid shall be paid from the State treasury on warrants approved by the auditor, and the State Treasurer is hereby authorized to make such payment. (1919, c. 62, s. 13; C. S., s. 4894.)

Part 5. Tuberculosis.

§ 106-336. Animals reacting to tuberculin test. — All animals reacting to a tuberculin test applied by a qualified veterinarian shall be known as reactors and be forever considered as affected with tuberculosis. (1921, c. 177, s. 1; C. S., s. 4895(a).)

§ 106-337. Animals to be branded. — All veterinarians who, either by clinical examination or by tuberculin test, find an animal affected with tuberculosis, shall, unless the animal is immediately slaughtered, properly brand said animal for identification on the left jaw with the letter "T," not less than two inches high, and promptly report the same to the State Veterinarian. (1921, c. 177, s. 2; C. S., s. 4895(b).)

§ 106-338. Quarantine; removal or sale; sale and use of milk. — The owner or owners of an animal affected with tuberculosis shall keep said animal isolated and quarantined in such a manner as to prevent the spread of the disease to other animals or man. Said animals must not be moved from the place where quarantined or sold, or otherwise disposed of except upon permission of the State Veterinarian, and then only in accordance with his instructions. The milk from said animals must not be sold, and if used shall be first boiled or properly pasteurized. (1921, c. 177, s. 3; C. S., s. 4895(c).)

§ 106-339. Seller liable in civil action. — Any person or persons who sell or otherwise dispose of to another an animal affected with tuberculosis shall be

liable in a civil action to any person injured, and for any and all damages resulting therefrom. (1921, c. 177, s. 4; C. S., s. 4895(d).)

Cross Reference. — See §§ 106-403, 106-404.

§ 106-340. Responsibility of owner of premises where sale is made. — When cattle are sold or otherwise disposed of in this State by a nonresident of this State, the person or persons on whose premises the cattle are sold or otherwise disposed of with his knowledge and consent shall be equally responsible for violation of this law and the regulations of the Department of Agriculture. (1921, c. 177, s. 5; C. S., s. 4895(e).)

§ 106-341. Sale of tuberculin. — No person, firm, or corporation shall sell or distribute or administer tuberculin, or keep the same on hand for sale, distribution, or administration, except qualified veterinarians, licensed physicians, or licensed druggists, or others lawfully engaged in the sale of biological products. (1921, c. 177, s. 6; C. S., s. 4895(f).)

§ 106-342. Notice to owner of suspected animals; quarantine. — When the State Veterinarian receives information, or has reason to believe, that tuberculosis exists in any animal or animals, he shall promptly notify the owner or owners, and recommend that a tuberculin test be applied to said animals, that diseased animals shall be properly disposed of, and the premises disinfected under the supervision of the State Veterinarian, or his authorized representative. Should the owner or owners fail or refuse to comply with the said recommendations of the State Veterinarian within 10 days after said notice, then the State Veterinarian shall quarantine said animals on the premises of the owner or owners. Said animals shall not be removed from the premises where quarantined and milk or other dairy products from same shall not be sold or otherwise disposed of. Said quarantine shall remain in effect until the said recommendations of the State Veterinarian have been complied with, and the quarantine canceled by the State Veterinarian. (1921, c. 177, s. 7; C. S., s. 4895(g).)

§ 106-343. Appropriations by counties; elections. — The several boards of county commissioners in the State are hereby expressly authorized and empowered to make such appropriations from the general funds of their county as will enable them to cooperate effectively with the State and federal departments of agriculture in the eradication of tuberculosis in their respective counties: Provided, that if in 10 days after said appropriation is voted, one fifth of the qualified voters of the county petition the board of commissioners to submit the question of tuberculosis eradication or no tuberculosis eradication to the voters of the county, said commissioners shall submit such questions to said voters. Said election shall be held and conducted under the rules and regulations provided for holding stock-law elections in G.S. 68-16, 68-20 and 68-21. If at any such election a majority of the votes cast shall be in favor of said tuberculosis eradication, the said board shall record the result of the election upon its minutes, and cooperative tuberculosis eradication shall be taken up with the State and federal departments of agriculture. If, however, a majority of the votes cast shall be adverse, then said board shall make no appropriation. (1921, c. 177, s. 8; C. S., s. 4895(h).)

Editor's Note. — The references to §§ 68-16, 68-20 and 68-21 in the second sentence are to former sections existing prior to the revision of Article 3 of Chapter 68 by Session Laws 1971, c. 741. Among other things, that act did away with the distinction between "stock-law" and "no-stock-law" territory and eliminated provisions for elections on the question of "stock law" or "no stock law."

§ 106-344. Petition for election if commissioners refuse cooperation; order; effect. — If the board of commissioners of any county should exercise their discretion and refuse to cooperate as set out in G.S. 106-343, then if a petition is presented to said board by one fifth of the qualified voters of the county requesting that an election be held as provided in G.S. 106-343 to determine the question of tuberculosis eradication in the county, the board of commissioners shall order said election to be held in the way provided in G.S. 106-343, and if a majority of the votes cast at such election shall be in favor of tuberculosis eradication, then said board shall cooperate with the State and federal governments as herein provided. (1921, c. 177, s. 9; C. S., s. 4895(i).)

§ 106-345. Importation of cattle. — Whenever a county board shall cooperate with the State and federal governments, whether with or without an election, no cattle except for immediate slaughter shall be brought into the county unless accompanied by a tuberculin test chart and health certificate issued by a qualified veterinarian. (1921, c. 177, s. 10; C. S., s. 4895(j).)

§ 106-346. Amount of appropriation. — When cooperative tuberculosis eradication shall be taken up in any county as provided for in G.S. 106-336 to 106-350, the county commissioners of such counties shall appropriate from the general county fund an amount sufficient to defray one half of the expense of said cooperative tuberculosis eradication. (1921, c. 177, s. 11; C. S., s. 4895(k).)

§ 106-347. Qualified veterinarian. — The words "qualified veterinarian" which appear in G.S. 106-336 to 106-350 shall be construed to mean a veterinarian approved by the State Veterinarian and the chief of the United States Bureau of Animal Industry for the tuberculin testing of cattle intended for interstate shipment. (1921, c. 177, s. 12; C. S., s. 4895(l).)

§ 106-348. Rules and regulations. — The Commissioner of Agriculture, by and with the consent of the State Board of Agriculture, shall have full power to promulgate and enforce such rules and regulations as may be necessary to control and eradicate tuberculosis. (1921, c. 177, s. 13; C. S., s. 4895(m).)

§ 106-349. Violation of law a misdemeanor. — Any person or persons who shall violate any provision set forth in G.S. 106-336 to 106-350, or any rule or regulation duly established by the State Board of Agriculture or any officer or inspector who shall willfully fail to comply with any provisions of this law, shall be guilty of a misdemeanor. (1921, c. 177, s. 14; C. S., s. 4895(n).)

§ 106-350. Sale of tubercular animal a felony. — Any person or persons who shall willfully and knowingly sell or otherwise dispose of any animal or animals known to be affected with tuberculosis without permission as provided for in G.S. 106-338 shall be guilty of a felony, and punishable by imprisonment of not less than one year or not more than five years in the State prison. (1921, c. 177, s. 15; C. S., s. 4895(o).)

Part 6. Cattle Tick.

§ 106-351. Systematic dipping of cattle or horses. — Systematic dipping of all cattle or horses infested with or exposed to the cattle tick (Margaropus annulatus) shall be taken up in all counties or portions of counties that shall at any time be found partially or completely infested with the cattle tick (Margaropus annulatus) under the direction of the State Veterinarian acting under the authority as hereinafter provided in G.S. 106-351 to 106-363 and as provided in all other laws and parts of laws of North Carolina and the livestock sanitary laws and regulations of the State Board of Agriculture not in conflict with G.S. 106-351 to 106-363. (1923, c. 146, s. 1; C. S., s. 4895(p).)

Editor's Note. — It is said in 1 N.C.L. Rev. 301, that this statute reinforces §§ 106-22 and 106-306.

§ 106-352. Counties not embraced in quarantine zones. — If it shall be determined by the State Veterinarian or an authorized quarantine inspector, that any county or counties shall be partially or completely infested with the cattle tick (Margaropus annulatus), the county commissioners of said counties which are partially or completely infested with the cattle tick (Margaropus annulatus) shall immediately take up the work of systematic tick eradication as hereafter provided and continue same until the cattle tick (Margaropus annulatus) is completely eradicated and notice in writing of same is given by the State Veterinarian. (1923, c. 146, s. 3; C. S., s. 4895(r).)

§ 106-353. Dipping vats; counties to provide; cost. — The county commissioners of the aforesaid counties shall provide such numbers of dipping vats as may be fixed by the State Veterinarian or his authorized representative, and provide the proper chemicals and other materials necessary to be used in the work of systematic tick eradication in such counties, which shall begin on said dates and continue until the cattle tick (Margaropus annulatus) is completely eradicated and notice in writing of same is given by the State Veterinarian. The cost of said vats and chemicals, or any other expense incurred in carrying out the provisions of G.S. 106-351 to 106-363, except G.S. 106-354 and 106-358, shall be paid out of the general county fund. (1923, c. 146, s. 4; C. S., s. 4895(s).)

§ 106-354. Local State inspectors; commissioned as quarantine inspectors; salaries, etc. — The State Veterinarian shall appoint the necessary number of local State inspectors to assist in systematic tick eradication, who shall be commissioned by the Commissioner of Agriculture as quarantine inspectors. The salaries of said inspectors shall be sufficient to insure the employment of competent men. If the service of any of said inspectors is not satisfactory to the State Veterinarian, his services shall be immediately discontinued and his commission canceled. (1923, c. 146, s. 5; C. S., s. 4895(t); 1925, c. 275, s. 6.)

§ 106-355. Enforcement of compliance with law. — If the county commissioners shall fail, refuse or neglect to comply with the provisions of G.S. 106-351 to 106-363, the State Veterinarian shall apply to any court of competent jurisdiction for a writ of mandamus, or shall institute such other proceedings as may be necessary and proper to compel such county commissioners to comply with the provisions of G.S. 106-351 to 106-363. (1923, c. 146, s. 6; C. S., s. 4895(u).)

§ 106-356. Owners of stock to have same dipped; supervision of dipping; dipping period. — Any person or persons, firms or corporations, owning or having in charge any cattle, horses or mules in any county where tick eradication shall be taken up, or is in progress under existing laws, shall, on notification by any quarantine inspector to do so, have such cattle, horses or mules dipped regularly every 14 days in a vat properly charged with arsenical solution as recommended by the United States Bureau of Animal Industry, under the supervision of said inspector at such time and place and in such manner as may be designated by the quarantine inspector. The dipping period shall be continued as long as may be required by the rules and regulations of the State Board of Agriculture, which shall be sufficient in number and length of time to completely destroy and eradicate all cattle ticks (Margaropus annulatus) in such county or counties. (1923, c. 146, s. 7; C. S., s. 4895(v).)

§ 106-357. Service of notice. — Quarantine and dipping notice for cattle, horses and mules, the owner or owners of which cannot be found, shall be served

by posting copy of such notice in not less than three public places within the county, one of which shall be placed at the county courthouse. Such posting shall be due and legal notice. (1923, c. 146, s. 8; C. S., s. 4895(w).)

§ 106-358. Cattle placed in quarantine; dipping at expense of owner. — Cattle, horses or mules infested with or exposed to the cattle tick (Margaropus annulatus) the owner or owners of which, after five days' written notice from a quarantine inspector of such animals as is provided for in G.S. 106-357, shall fail or refuse to dip such animals regularly every 14 days in a vat properly charged with arsenical solution, as recommended by the United States Bureau of Animal Industry, under the supervision of a quarantine inspector, shall be placed in quarantine, dipped and cared for at the expense of the owner or owners, by the quarantine inspector. (1923, c. 146, s. 9; C. S., s. 4895(x).)

§ 106-359. Expense of dipping as lien on animals; enforcement of lien. — Any expense incurred in the enforcement of G.S. 106-358 and the cost of feeding and caring for animals while undergoing the process of tick eradication shall constitute a lien upon any animal, and should the owner or owners fail or refuse to pay said expense, after three days' notice, they shall be sold by the sheriff of the county after 20 days' advertising at the courthouse door and three other public places in the immediate neighborhood of the place at which the animal was taken up for the purpose of tick eradication. The said advertisement shall state therein the time and place of sale, which place shall be where the animal is confined. The sale shall be at public auction and to the highest bidder for cash. Out of the proceeds of the sale the sheriff shall pay the cost of publishing the notices of the tick-eradication process, including dipping, cost of feeding and caring for the animals and cost of the sale, which shall include one dollar and fifty cents ($1.50) in the case of each sale to said sheriff. The surplus, if any, shall be paid to the owner of the animal if he can be ascertained. If he cannot be ascertained within 30 days after such sale, then the sheriff shall pay such surplus to the county treasurer for the benefit of the public school fund of the county: Provided, however, that if the owner of the animal shall, within 12 months after the fund is turned over to the county treasurer, as aforesaid, prove to the satisfaction of the board of county commissioners of the county that he was the owner of such animal, then, upon the order of said board, such surplus shall be refunded to the owner. (1923, c. 146, s. 10; C. S., s. 4895(y).)

§ 106-360. Duty of sheriff. — It shall be the duty of the sheriff, in any county in which the work of tick eradication is in progress, to render all quarantine inspectors any assistance necessary in the enforcement of G.S. 106-351 to 106-363 and the regulations of the North Carolina Department of Agriculture. If the sheriff of any county shall neglect, fail or refuse to render this assistance when so required, he shall be guilty of a misdemeanor and be punishable at the discretion of the court. (1923, c. 146, s. 11; C. S., s. 4895(z).)

§ 106-361. Rules and regulations. — The Commissioner of Agriculture, by and with the consent of the State Board of Agriculture, shall have full power to promulgate and enforce such rules and regulations that may hereafter be necessary to complete tick eradication in North Carolina. (1923, c. 146, s. 12; C. S., s. 4895(aa).)

§ 106-362. Penalty for violation. — Any person, firm or corporation who shall violate any provisions set forth in G.S. 106-351 to 106-363 or any rule or regulation duly established by the State Board of Agriculture, or any officer or inspector who shall willfully fail to comply with any provision of G.S. 106-351 to 106-363 shall be guilty of a misdemeanor. (1923, c. 146, s. 13; C. S., s. 4895(bb).)

§ 106-363. Damaging dipping vats a felony. — Any person or persons who shall willfully damage or destroy by any means any vat erected, or in the process

of being erected, as provided for tick eradication, shall be guilty of a felony and upon conviction shall be imprisoned not less than two years nor more than 10 years in the State prison. (1923, c. 146, s. 14; C. S., s. 4895(cc).)

Part 7. Rabies.

§ 106-364. Definitions. — The following definitions shall apply to G.S. 106-364 to 106-387:

(1) The term "dog" shall mean a dog of either sex.

(2) The term "local health director" shall be understood to include district health officer, county health officer, city health officer, and city-county health officer, county superintendent of health, or any other administrative head of a local health department.

(3) The term "vaccination" shall be understood to mean the administration of antirabic vaccine approved by the United States Bureau of Animal Industry, the North Carolina State Department of Agriculture, and the North Carolina Commission for Health Services. (1935, c. 122, s. 1; 1949, c. 645, s. 1; 1953, c. 876, s. 1; 1957, c. 1357, s. 3; 1973, c. 476, s. 128.)

Editor's Note. — Session Laws 1953, cc. 120, 252, made all of the provisions of this Part, §§ 106-364 through 106-387, applicable to Persons and Union Counties, respectively.

Session Laws 1957, c. 277, made all the provisions of this Part applicable to Edgecombe County.

The 1973 amendment substituted "Commission for Health Services" for "State Board of Health" in subdivision (3).

§ 106-365. Vaccination of all dogs. — In all counties where a campaign of vaccination is being conducted, it shall be the duty of the owner of each and every dog over four months of age to have same vaccinated against rabies annually, or at a time or times determined by the Commission for Health Services, but no more often than once in each calendar year in accordance with the provisions of G.S. 106-364 to 106-387. All antirabic vaccine shall be administered by licensed veterinarians or by properly qualified laymen in accordance with the provisions of G.S. 106-366. (1935, c. 122, s. 2; 1941, c. 259, s. 2; 1953, c. 876, s. 2; 1973, c. 476, s. 128.)

Editor's Note. — The 1973 amendment substituted "Commission for Health Services" for "State Board of Health" in the first sentence.

§ 106-366. Appointment and qualifications of rabies inspectors; preference to veterinarians. — It shall be the duty of the local health director with the approval of the board of county commissioners of each county, and in those counties where a local health director is not employed it shall be the duty of the county board of commissioners, to appoint a sufficient number of rabies inspectors to carry out the provisions of G.S. 106-364 to 106-387. In the appointment of rabies inspectors, preference shall be given to licensed veterinarians. No person shall be appointed as a rabies inspector unless such person is of good moral character and by training and experience is qualified in the opinion of the local health director and the board of county commissioners to perform the duties required under G.S. 106-364 to 106-387. (1935, c. 122, s. 3; 1941, c. 259, s. 3; 1953, c. 876, s. 3; 1957, c. 1357, s. 4.)

Local Modification. — Davie: 1937, c. 255.

§ 106-367. Time of vaccination. — The vaccination of all dogs shall begin on February 1 and shall be completed within 90 days of that date. Provided, however, that the local health director, in those counties having a local health director, and the county board of commissioners in those counties which do not have a local health director, may require the vaccination of all dogs within any area of said counties when such vaccination is deemed necessary for the control of rabies. (1935, c. 122, s. 4; 1949, c. 645, s. 2; 1953, c. 876, s. 4; 1957, c. 1357, s. 5.)

§ 106-368. Publication of notice of date of vaccination; duty of owner. — The rabies inspector shall give due notice through the newspaper of the county and by posting notice at the courthouse and at one or more public places in each township of the county of the date on which the vaccination of all dogs shall be started in a county and it shall be the duty of the owner of every dog in said county to have said dog, or dogs, at either of two or more points in the township for the purpose of having same vaccinated, said points and date to be designated by the rabies inspector. (1935, c. 122, s. 5; 1941, c. 259, s. 4.)

§ 106-369. Vaccine and cost; metal tag to be worn by dog; certificate of vaccination. — The State Department of Agriculture may purchase proper rabies vaccine and a uniform metal tag serially numbered, suitably lettered and showing the year issued, provided for in G.S. 106-364 to 106-387, for resale to the rabies inspectors. The resale price shall include State cost of the vaccine, metal tags, handling and postage. At the time of vaccination the rabies inspector shall give to the owner or person in charge of each dog vaccinated a numbered metal tag together with a certificate. The certificate shall be issued in duplicate, the rabies inspector to retain a copy. The metal tag shall be worn by the dog at all times. (1935, c. 122, s. 6; 1941, c. 259, s. 5; 1959, c. 352.)

Local Modification. — Orange: 1953, c. 367, s. 5.

§ 106-370. Notice to sheriff of each county and his duty to assist. — The rabies inspector shall notify the sheriff of the county of the date when the vaccination of dogs in said county shall begin and it shall be the duty of the sheriff and his deputies to assist the rabies inspector in the enforcement of G.S. 106-364 to 106-387. (1935, c. 122, s. 7; 1941, c. 259, s. 6.)

§ 106-371. Canvass of dogs not wearing metal tags; notice to owners to have dogs vaccinated; killing of ownerless dogs. — When the rabies inspector has carried out the provisions of G.S. 106-364 to 106-387 as to G.S. 106-368 in all townships of the county, it shall be the duty of the sheriff with the assistance of the rabies inspector to make a thorough canvass of the county and frequently thereafter to determine if there are any dogs that are not wearing the metal tag provided for in G.S. 106-369. If such dogs are found, the sheriff shall notify the owner to have same vaccinated by a rabies inspector and to produce the certificate provided for in G.S. 106-369, within three days. If the owner shall fail to do this he shall be prosecuted in accordance with the provisions of G.S. 106-364 to 106-387. If the owner of a dog not wearing a tag cannot be found it shall be the duty of said officer to destroy said dog. (1935, c. 122, s. 8.)

Local Modification. — Forsyth: 1949, c. 622, s. 2; Guilford: 1949, c. 462, s. 1; Mecklenburg: 1957, c. 904.

§ 106-372. Fee for vaccination; penalty for late vaccination. — The rabies inspector shall collect from the owner of each dog vaccinated a vaccination fee

in an amount if any to be fixed by the county board of commissioners. Any owner who fails to have his dog vaccinated at the time provided in G.S. 106-368 shall have said dog vaccinated in accordance with G.S. 106-371 and shall pay the rabies inspector an additional sum of one dollar ($1.00) to be retained by him for each dog treated. (1935, c. 122, s. 9; 1941, c. 259, s. 7; 1949, c. 645, s. 5; 1953, c. 876, s. 5; 1959, c. 139.)

Local Modification. — Guilford: 1949, c. 462, s. 2; Washington: 1955, c. 353; Wilson: 1941, c. 259, s. 7.

§ 106-372.1: Repealed by Session Laws 1953, c. 876, s. 6.

§ 106-373. Vaccination of dogs after vaccination period. — It shall be the duty of the owner of any dog born after February 1 in any year or any dog which shall not be four months old on February 1 in any year to take the dog, when four months of age or within 30 days thereafter, to a licensed veterinarian or to a rabies inspector and have it vaccinated against rabies. (1935, c. 122, s. 10; c. 344; 1941, c. 259, s. 8; 1949, c. 645, s. 6; 1953, c. 876, s. 7.)

Local Modification. — Wilson: 1941, c. 259, s. 8.

§ 106-374. Vaccination and confinement of dogs brought into State. — All dogs shipped or otherwise brought into this State, except for exhibition purposes where the dogs are confined and not permitted to run at large, shall be securely confined and vaccinated within one week after entry, and shall remain confined for two additional weeks after vaccination unless accompanied by a certificate issued by a qualified veterinarian showing that said dog is apparently free from rabies and has not been exposed to same and that said dog has received a proper dose of rabies vaccine not more than six months prior to the date of issuing the certificate. (1935, c. 122, s. 11.)

§ 106-375. Quarantine of districts infected with rabies. — The local health director and, in those counties where local health directors are not employed, the county board of commissioners may declare quarantine against rabies in any district when in his or its judgment this disease exists to the extent that the lives of persons are endangered, and in that event each and every dog in such district shall be confined on the premises of the owner or in a veterinary hospital; provided, that a dog may be permitted to leave the premises of the owner if on leash or under the control and in the sight of its owner or other responsible person at all times. (1935, c. 122, s. 12; 1941, c. 259, s. 9; 1949, c. 645, s. 3; 1953, c. 876, s. 8; 1957, c. 1357, s. 8.)

Local Modification. — Cleveland: 1955, c. 306.

§ 106-376. Killing stray dogs in quarantine districts. — When quarantine has been established, and dogs continue to run at large, uncontrolled by owners or persons responsible for their control, any peace officer shall have the right after reasonable effort has been made on the part of the officers to apprehend the dogs running at large to kill said dogs and properly dispose of their bodies. (1935, c. 122, s. 13; 1953, c. 876, s. 9.)

§ 106-377. Infected dogs to be killed; protection of dogs vaccinated. — Every dog known to have been bitten by another animal which is known or

proved to be rabid shall be killed immediately by its owner or by a peace officer; provided, that any dog which has been vaccinated in accordance with G.S. 106-364 to 106-387 at least three weeks before being bitten but not more than one year before, shall be closely confined for 90 days. At the end of the period of confinement, such dog shall be released if declared free of rabies by a rabies inspector or a licensed graduate veterinarian. If during the period of confinement such dog develops rabies, as determined by a licensed graduate veterinarian, it shall be the duty of the owner to have such animal killed, and properly disposed of, subject to the provisions of G.S. 106-379. (1935, c. 122, s. 14; 1953, c. 876, s. 10.)

§ 106-378. Confinement of suspected animals. — Every person who owns or has possession of an animal which is suspected of having rabies shall confine such animal at once in some secure place for at least 10 days before such animal shall be released. (1935, c. 122, s. 15; c. 344; 1941, c. 259, s. 10; 1953, c. 876, s. 11.)

§ 106-379. Animals having rabies to be killed; heads ordered to a laboratory. — Every rabid animal, after rabies has been diagnosed by a licensed graduate veterinarian, shall be killed at once by its owner or by a peace officer; except that if the animal has bitten a human being, such animal shall be confined under the supervision of a licensed graduate veterinarian until the death of the animal. All heads of animals suspected of dying of rabies shall be sent immediately to a laboratory approved by the Department of Human Resources. Care shall be taken not to damage the brain and to submit such specimens in a manner approved by the State Laboratory of Hygiene. (1935, c. 122, s. 16; 1953, c. 876, s. 12; 1973, c. 476, s. 128.)

Editor's Note. — The 1973 amendment substituted "Department of Human Resources" for "State Board of Health."

§ 106-380. Notice to local health director when person bitten; confinement of dog; reports by physicians. — When a person has been bitten by an animal having rabies or suspected of having rabies, it shall be the duty of such person, or his parent or guardian if such person is a minor, and the person owning such animal or having the same in his possession or under his control, to notify the local health director immediately and give their names and addresses; and the owner or person having such animal in his possession or under his control shall immediately securely confine it for 10 days at the expense of the owner in such place as may be designated by the local health director. It shall be the duty of every physician, after his first professional attendance upon a person bitten by any animal having rabies or suspected of having rabies, to report to the local health director the name, age and sex of the person so bitten, and precise location of the bite wound, within 24 hours after first having knowledge that the person was bitten. (1935, c. 122, s. 17; 1941, c. 259, s. 11; 1953, c. 876, s. 13; 1957, c. 1357, s. 9.)

§ 106-381. Confinement or leashing of vicious animals. — When an animal becomes vicious or a menace to the public health, the owner of such animal or person harboring such animal shall not permit such animal to leave the premises on which kept unless on leash in the care of a responsible person. (1935, c. 122, s. 18; 1953, c. 876, s. 14.)

Ordinance Valid. — An ordinance of a city making it unlawful to keep a dog which habitually or repeatedly chases, snaps at, attacks or barks at pedestrians, bicycles or vehi-

cles is a valid exercise of the city's police power. Gray v. Clark, 9 N.C. App. 319, 176 S.E.2d 16 (1970).

To safeguard and promote the public health, safety and convenience, municipal power to regulate the keeping and licensing of dogs within the corporate area is generally recognized, and ordinances regulating and requiring them to be registered, licensed, and at times muzzled and prevented from going at large, are within the police powers usually conferred upon the local corporation. Such ordinances are authorized by virtue of general powers and the usual general welfare clause. Gray v. Clark, 9 N.C. App. 319, 176 S.E.2d 16 (1970).

Evidence Insufficient to Show Dog "Vicious". — Evidence that a small dog frequently dashed into the street to bark at and pursue motorcycles, automobiles, and other noisy vehicles is not sufficient to justify classifying him as a "vicious" animal and does not make him "a menace to the public health." Sink v. Moore, 267 N.C. 344, 148 S.E.2d 265 (1966); Gray v. Clark, 9 N.C. App. 319, 176 S.E.2d 16 (1970).

Canine courage in a contest for the championship of the neighborhood, together with determination to remain in possession of the field of battle "whence all but him had fled," is not evidence of a vicious character within the meaning of this section. Sink v. Moore, 267 N.C. 344, 148 S.E.2d 265 (1966).

§ 106-382. Administration of law in cities and larger towns; cooperation with sheriffs. — In towns or cities with a population of 5,000, or more, the responsibility for assistance in the enforcement of G.S. 106-364 to 106-387 shall be with the public safety or police department of said town or city, and this department shall be subject to the same rules, regulations and penalties as the sheriffs of the several counties; and it shall further be the duty of the public safety or police department in towns or cities assisting in the enforcement of G.S. 106-364 to 106-387 to cooperate with the sheriff of any county in the carrying out of the provisions of G.S. 106-364 to 106-387 for a distance of one mile beyond the city limits. (1935, c. 122, s. 19.)

§ 106-383. Regulation of content of vaccine; doses. — Rabies vaccine intended for use on dogs and other animals shall not be shipped or otherwise brought into North Carolina, used, sold, or offered for sale unless said rabies vaccine shall be approved by the U.S. Bureau of Animal Industry, North Carolina State Department of Agriculture and North Carolina Commission for Health Services. Rabies vaccine shall be given in doses recommended by the manufacturer of the vaccine. (1935, c. 122, s. 20; 1953, c. 876, s. 15; 1973, c. 476, s. 128.)

Editor's Note. — The 1973 amendment substituted "Commission for Health Services" for "State Board of Health" in the first sentence.

§ 106-384. Law declared additional to other laws on subject. — The provisions of G.S. 106-364 to 106-387 shall not be construed to repeal or change any laws heretofore enacted but shall be in addition thereto except insofar as said laws heretofore enacted and enforced shall actually conflict with the provisions of G.S. 106-364 to 106-387 and prevent the proper enforcement of said provisions. And the said laws enacted and now in force shall remain in full force and effect except as they do actually conflict with the enforcement of the provisions of G.S. 106-364 to 106-387 in which G.S. 106-364 to 106-387 and the provisions thereof shall prevail. (1935, c. 122, s. 21.)

§ 106-385. Violation made misdemeanor. — Any person who shall violate any of the provisions of G.S. 106-364 to 106-387 or any provision of any regulation of quarantine established thereunder shall be guilty of a misdemeanor and upon conviction thereof shall be subject to a fine of not less than ten dollars ($10.00) or more than fifty dollars ($50.00), or to imprisonment of not less than 10 days or more than 30 days in the discretion of the court. (1935, c. 122, s. 23.)

Local Modification. — Orange: 1953, c. 367, s. 5.

§ 106-386. Present dog tax limited. — No county, city or town shall levy any additional taxes on dogs other than the tax now levied. (1935, c. 122, s. 24.)

§ 106-387. Disposition of funds. — Any money collected under the provisions of G.S. 106-364 to 106-387 in excess of the cost of operations and enforcement shall become a part of the agricultural fund of the State of North Carolina. (1935, c. 190.)

Part 8. Brucellosis (Bang's Disease).

§ 106-388. Animals affected with, or exposed to, brucellosis declared subject to quarantine, etc. — It is hereby declared that the disease of animals known as brucellosis, or Bang's disease, is of an infectious and contagious nature, and animals affected with, or exposed to, or suspected of being carriers of the disease, shall be subject to quarantine and the rules and regulations of the Department of Agriculture. (1937, c. 175, s. 1; 1967, c. 511.)

§ 106-389. Brucellosis defined; program for vaccination; sale, etc., of vaccine; cooperation with the United States Department of Agriculture. — "Brucellosis" shall mean the disease wherein an animal is infected with Brucella organisms (including Brucella Abortus, B. Melitensis and B. Suis), irrespective of the occurrence or absence of abortion or other symptoms. An animal shall be declared affected with brucellosis if it is classified as a reactor to a serological test for the disease, or if the Brucella organism has been found in the body, its secretions or discharges. The State Veterinarian is hereby authorized and empowered to set up a program for the vaccination of calves in accordance with the recommendations of the Brucellosis Committee of the United States Livestock Sanitary Association, and approved by the United States Department of Agriculture, when in his opinion vaccination is necessary for the control and eradication of brucellosis. Vaccinated animals shall be permanently identified by tattooing or other methods approved by the Commissioner of Agriculture. Above the ages designated by regulation of the Board of Agriculture, all such vaccinates classified as reactors on an official test for brucellosis, shall be considered as affected with brucellosis and shall be branded with the letter "B" in accordance with G.S. 106-390. It shall be unlawful to sell, offer for sale, distribute, or use brucellosis vaccine or any product containing live Brucella organisms, except as provided for in regulations adopted by the Board of Agriculture.

The control and eradication of brucellosis in the herds of North Carolina shall be conducted as far as available funds will permit, and in accordance with the rules and regulations made by the Board of Agriculture. The Board of Agriculture is hereby authorized to cooperate with the United States Department of Agriculture in the control and eradication of brucellosis. (1937, c. 175, s. 2; 1945, c. 462, s. 1; 1953, c. 1119; 1967, c. 511.)

§ 106-390. Blood sample testing; diseased animals to be branded and quarantined; sale; removal of identification, etc. — All blood samples for the brucellosis test shall be drawn by persons whose qualifications are set by regulation of the Board of Agriculture. Animals from which blood is collected for a brucellosis test shall be identified by numbered ear tag, tattoo, or in some other manner approved by the Commissioner of Agriculture. It shall be the duty of the person who collects the blood sample, or other designated authorized person, to brand all cattle affected with brucellosis with the letter "B" on the left hip or jaw, not less than three or more than four inches high, tag such

animals with an approved brucellosis reactor ear tag, and report the same to the State Veterinarian. It shall be the duty of the person owning said cattle at the time of said testing to assist with and cooperate with the person testing said cattle. Cattle affected with brucellosis shall be quarantined and slaughtered at a State or federally inspected slaughter plant within 10 days after branding and tagging; provided the State Veterinarian, in his discretion, may grant an extension of time for said slaughter not to exceed 30 days; and provided further that the Commissioner of Agriculture may allow a branded and tagged animal having unusual breeding value to be held for a period of time determined by him under conditions of isolation and quarantine prescribed by the State Veterinarian. Animals believed by the State Veterinarian or his authorized representative to have been exposed to brucellosis, or animals classified as suspects, shall be quarantined on the owner's premises or at such other place as is mutually agreeable to the owner and the State Veterinarian until the quarantine is removed in accordance with law or until the animal is disposed of in accordance with law. No animal affected with, or exposed to, brucellosis shall be sold, traded or otherwise disposed of except for immediate slaughter, and it shall be the duty of the person disposing of such infected animals to see that they are promptly slaughtered and a written report of same made to the State Veterinarian.

All cattle, swine, sheep, goats or other animals subject to infection by Brucella organisms, sold, or offered at public sale, except for immediate slaughter, shall be subject to test requirements established by the Board of Agriculture.

No ear tag, back tag, or other mark of identification approved by the Commissioner of Agriculture for identifying animals for the purpose of brucellosis testing, including testing at slaughter plants, shall be removed from the animal without authorization from the State Veterinarian or his authorized representative. (1937, c. 175, s. 3; 1945, c. 462, s. 2; 1959, c. 1171; 1963, c. 489; 1967, c. 511; 1969, c. 465.)

§ 106-391. Civil liability of vendors. — Any person or persons who knowingly sells, or otherwise disposes of, to another, an animal affected with brucellosis shall be liable in a civil action to any person injured, and for any and all damages resulting therefrom. (1937, c. 175, s. 4; 1967, c. 511.)

Cross Reference. — For similar section, see § 106-339.

§ 106-392. Sales by nonresidents. — When cattle are sold, or otherwise disposed of, in this State, by a nonresident of this State, the person or persons on whose premises the cattle are sold, or otherwise disposed of, with his knowledge and consent, shall be equally responsible for violations of G.S. 106-388 to 106-398 and the regulations of the Department of Agriculture. (1937, c. 175, s. 5; 1967, c. 511.)

§ 106-393. Duties of State Veterinarian; quarantine of animals; required testing. — When the State Veterinarian receives information, or has reasonable grounds to believe, that brucellosis exists in any animal, or animals, or that it has been exposed to the disease, he shall promptly cause said animal, or animals, to be quarantined on the premises of owner or such other place as is mutually agreeable to the owner and the State Veterinarian or his authorized representative. Said animals shall not be removed from premises where quarantined until quarantine has been released by State Veterinarian or his authorized representative. A permit to move such infected or exposed animals to immediate slaughter may be issued by the State Veterinarian or his authorized representative. The Board of Agriculture is empowered to make

regulations to provide for compulsory testing of animals for brucellosis. (1937, c. 175, s. 6; 1967, c. 511.)

§ 106-394. Cooperation of county boards of commissioners. — The several boards of county commissioners in the State are hereby expressly authorized and empowered within their discretion to make such appropriations from the general funds of their county as will enable them to cooperate effectively with the State and United States Departments of Agriculture in the eradication of brucelosis in their respective counties. (1937, c. 175, s. 7; 1967, c. 511.)

§ 106-395. Compulsory testing. — Whenever a county board of commissioners shall cooperate with the State and the United States governments, as provided for in G.S. 106-388 to 106-398, the testing of all cattle in said county shall become compulsory, and it shall be the duty of the cattle owners to give such assistance as may be necessary for the proper testing of said cattle. (1937, c. 175, s. 8; 1967, c. 511.)

§ 106-396. Authority to promulgate and enforce rules and regulations. — The Commissioner of Agriculture, by and with the consent of the State Board of Agriculture, shall have full power to promulgate and enforce such rules and regulations as may be necessary to carry out the provisions of G.S. 106-388 to 106-398, and for the effective control and eradication of brucellosis. (1937, c. 175, s. 10; 1967, c. 511.)

§ 106-397. Violation made misdemeanor. — Any person or persons who shall violate any provision set forth in G.S. 106-388 to 106-398, or any rule or regulation duly established pursuant to this Article by the State Board of Agriculture or any inspector who shall willfully fail to comply with any provisions of G.S. 106-388 to 106-398, shall be guilty of a misdemeanor. (1937, c. 175, s. 11; 1967, c. 511.)

§ 106-398. Punishment for sale of animals known to be infected, or under quarantine. — Any person or persons who shall willfully and knowingly sell or otherwise dispose of any animal or animals known to be affected with brucellosis, or under quarantine because of suspected exposure to brucellosis, except as provided for in G.S. 106-388 to 106-398, shall be guilty of a misdemeanor, and punishable by a fine of not less than fifty dollars ($50.00) and not more than two hundred dollars ($200.00), or imprisoned for a term of not less than 30 days or more than two years. (1937, c. 175, s. 12; 1967, c. 511.)

§ 106-399: Repealed by Session Laws 1967, c. 511.

Part 9. Control of Livestock Diseases.

§ 106-400. Permit from State Veterinarian for sale, transportation, etc., of animals affected with disease. — No person or persons shall sell, trade, offer for sale or trade, or transport by truck or other conveyance on any public road or other public place within the State any animal or animals affected with a contagious or infectious disease, except upon a written permit of the State Veterinarian and in accordance with the provisions of said permit. The State Veterinarian, or his authorized representative, is hereby empowered to examine any livestock that are being transported or moved, sold, traded, offered for sale or trade on any highway or other public place within the State for the purpose of determining if said animals are affected with a contagious or infectious disease, or are being transported or offered for sale or trade in violation of G.S. 106-400 to 106-405. If the animals are found to be diseased or are being moved, sold, offered for sale or trade in violation of G.S. 106-400 to 106-405, they shall be placed under quarantine in accordance with the provisions of G.S. 106-400

to 106-405 in a place to be determined by the State Veterinarian or his authorized representative. Any animal or animals shipped or otherwise moved into this State in violation of federal laws or regulations shall be handled in accordance with the provisions of G.S. 106-400 to 106-405. (1939, c. 360, s. 1.)

Cross Reference. — See § 106-307.4.

§ 106-401. State Veterinarian authorized to quarantine. — The State Veterinarian or his authorized representative is authorized to go upon or enter any property in the State, or to stop any motor vehicle on a public or private road to examine any animal which he has reasonable grounds to believe is affected with or exposed to a contagious disease. If such person refuses to consent to such entry and examination after the State Veterinarian or his authorized representative shall have notified, in writing, the owner or person in whose custody such animal or animals are found, of his intention to enter such property and conduct such examination, the State Veterinarian or his authorized representative may petition the district court in the county where such animal or animals are found for an order authorizing such entry and examination. The State Veterinarian or his authorized representative may quarantine any animal affected with or exposed to a contagious disease, or injected with or otherwise exposed to any material capable of producing a contagious disease and shall give public notice of such quarantine by posting or placarding with a suitable quarantine sign the entrance to any part of the premises on which such animal is held. Such animal is to be maintained by the owner or person in charge as provided in G.S. 106-400 through 106-405 at the owner's or person's in charge expense. No animal under quarantine shall be removed from the place of quarantine except upon a written permit from the State Veterinarian or his authorized representative. Such quarantine shall remain in effect until cancelled by official written notice from the State Veterinarian or his authorized representative and such quarantine shall not be cancelled until any sick or diseased animal has been properly disposed of and the premises have been properly cleaned and disinfected. (1939, c. 360, s. 2; 1971, c. 724.)

Cross Reference. — See § 106-307.3.

§ 106-401.1. Inspection and quarantine of poultry. — The State Veterinarian, or his authorized representative, is hereby authorized to go upon or enter any property in the State, or to stop any motor vehicle, to examine any poultry which he has reason to believe are affected with or exposed to a contagious disease. He or his authorized representative is authorized to quarantine any poultry affected with or exposed to a contagious disease, or injected with or otherwise exposed to any material capable of producing a contagious disease and to give public notice of such quarantine by posting or placarding with a suitable quarantine sign the entrance to or any part of the premises on which such poultry are held. Said poultry are to be maintained by the owner or person in charge as provided for in G.S. 106-400 to 106-405 at the owner's expense. The quarantine provision hereof shall not apply to those diseases which are endemic in the State and for which adequate preventive and control measures are not available. No poultry under quarantine shall be moved from the place of quarantine except upon a written permit from the State Veterinarian or his authorized representative. Said quarantine shall remain in effect until cancelled by official written notice from the State Veterinarian or his authorized representative and shall not be released or cancelled until the sick or dead poultry have been properly disposed of and the premises have been properly cleaned and disinfected. (1969, c. 693, s. 1.)

§ 106-402. Confinement and isolation of diseased animals required. — Any animal, animals or poultry affected with or exposed to a contagious or infectious disease shall be confined by the owner or person in charge of said animal, animals or poultry in such a manner, by penning or otherwise securing and actually isolating same from the approach or contact with other animals or poultry not so affected; they shall not have access to any ditch, canal, branch, creek, river, or other watercourse which passes beyond the premises of the owner or person in charge of said animals or poultry, or to any public road, or to the premises of any other person. (1939, c. 360, s. 3; 1969, c. 693, s. 2.)

Cross Reference. — See § 106-311.

§ 106-403. Disposition of dead domesticated animals. — It shall be the duty of the owner or person in charge of any of his domesticated animals that die from any cause and the owner, lessee, or person in charge of any land upon which any domesticated animals die, to bury the same to a depth of at least three feet beneath the surface of the ground within 24 hours after knowledge of the death of said domesticated animals, or to otherwise dispose of the same in a manner approved by the State Veterinarian. It shall be a violation of this statute to bury any dead domesticated animal closer than 300 feet to any flowing stream or public body of water. It shall be unlawful for any person to remove the carcasses of dead domesticated animals from his premises to the premises of any other person without the written permission of the person having charge of such premises and without burying said carcasses as above provided. The governing body of each municipality shall designate some appropriate person whose duty it shall be to provide for the removal and disposal, according to the provisions of this section, of any dead domesticated animals located within the limits of the municipality when the owner or owners of said animals cannot be determined. The board of commissioners of each county shall designate some appropriate person whose duty it shall be to provide for the removal and disposal, according to the provisions of this section, of any dead domesticated animals located within the limits of the county, but without the limits of any municipality, when the owner or owners of said animals cannot be determined. All costs incurred by a municipality or county in the removal of a dead domesticated animal shall be recoverable from the owner of such animal upon admission of ownership or conviction. "Domesticated animal" as used herein shall include poultry. (1919, c. 36; C. S., s. 4488; 1927, c. 2; 1939, c. 360, s. 4; 1971, c. 567, ss. 1, 2.)

§ 106-404. Animals affected with glanders to be killed. — If the owner of any animal having the glanders or farcy shall omit or refuse, upon discovery or knowledge of its condition, to deprive the same of life at once, he shall be guilty of a misdemeanor, and upon conviction shall be fined not more than fifty dollars ($50.00) or imprisoned not more than 30 days. (1881, c. 368, s. 8; Code, s. 2489; 1891, c. 65; Rev., s. 3296; C. S., s. 4489.)

Cross Reference. — As to compensation for killing diseased animals, see § 106-323 et seq.

§ 106-405. Violation made misdemeanor. — Any person or persons who shall knowingly and willfully violate any provision of G.S. 106-400 to 106-403 shall be guilty of a misdemeanor and punishable by a fine not in excess of five hundred dollars ($500.00) or imprisonment not in excess of six months, or both fine and imprisonment. (1939, c. 360, s. 6; 1969, c. 693, s. 3.)

Local Modification. — Macon: 1939, c. 360, s. 7.

Part 10. Feeding Garbage to Swine.

§ 106-405.1. Definitions. — For the purpose of this Part, the following words shall have the meanings ascribed to them in this section:

(1) "Garbage" means consisting in whole or in part of animal waste resulting from handling, preparing, cooking and consuming food, including the offal from or parts thereof; provided that the Commissioner of Agriculture or his authorized representative is empowered to exempt from this definition the waste resulting from the processing of seafood.

(2) "Person" means the State, any municipality, political subdivision, institution, public or private corporation, individual, partnership, or any other entity. (1953, c. 720, s. 1; 1967, c. 872, s. 1.)

§ 106-405.2. Permit for feeding garbage to swine. — (a) No person shall feed garbage to swine without first securing a permit therefor from the North Carolina Commissioner of Agriculture or his authorized agent. Such permits shall be issued for a period of one year and shall be renewable on the date of expiration.

(b) No permit shall be issued or renewed for garbage feeding under this Part in any county or other subdivision in which local regulations to prohibit garbage feeding are in effect.

(c) This Part shall not apply to any individual who feeds only his own household garbage to swine: Provided, that any such swine sold or disposed of shall be sold or disposed of in accordance with rules and regulations promulgated by the State Board of Agriculture. (1953, c. 720, s. 2; 1971, c. 566, s. 1.)

§ 106-405.3. Application for permit. — (a) Any person desiring to obtain a permit to feed garbage to swine shall make written application therefor to the North Carolina Commissioner of Agriculture in accordance with requirements of this Part.

(b) The Commissioner of Agriculture is hereby authorized to collect a fee of twenty-five dollars ($25.00) for each permit issued to a garbage feeder under the provisions of this Part. The fees provided for in this Part shall be used exclusively for the enforcement of this Part.

(c) No permit fee shall be collected from any federal, State, county, or municipal institution. (1953, c. 720, s. 3; 1967, c. 872, s. 2.)

§ 106-405.4. Revocation of permits. — Upon determination that any person, having a permit issued under this Part or one who has applied for a permit hereunder, has violated or failed to comply with any provisions of this Part, the North Carolina Commissioner of Agriculture may revoke such permit or refuse to issue a permit to an applicant therefor. (1953, c. 720, s. 4.)

§ 106-405.5. Sanitation. — Premises on which garbage feeding is permitted under this Part must be equipped with feeding platforms constructed of concrete, wood or other impervious material, or troughs of such material of sufficient size to accommodate the swine herd. Premises must be kept free of collections of unused garbage and waste materials. Sanitation, rat and fly control measures must be practiced as a further means of the prevention of the spread of diseases. (1953, c. 720, s. 5.)

§ 106-405.6. Cooking or other treatment. — All garbage, regardless of previous processing, shall, before being fed to swine, be thoroughly heated to at least 212 degrees F. for at least 30 minutes unless treated in some other

manner which shall be approved in writing by the North Carolina Commissioner of Agriculture as being equally effective for the protection of animal and human health. (1953, c. 720, s. 6.)

§ 106-405.7. Inspection and investigation; maintenance of records. — (a) Any authorized representative of the North Carolina Commissioner of Agriculture shall have the power to enter at reasonable times upon any private or public property for the purpose of inspecting and investigating conditions relating to the proper treatment of garbage to be fed to swine, sanitation of the premises and health of the animals.

(b) Garbage feeders shall keep a complete permanent record relating to the operation of equipment and their procedure of treating garbage, and also from whom all swine are received and to whom sold for immediate slaughter. Such record is to be available to the Commissioner of Agriculture or his authorized representative.

(c) Any operator, manager or person in charge of a restaurant, cafe, boardinghouse, school, hospital, or other public or private place where food is served to persons other than members of the immediate family or nonpaying guests of such operator, manager, or person in charge, shall not allow or permit garbage to be removed from the premises thereof unless the person removing said garbage is in possession of a valid garbage-feeding permit issued by the North Carolina Department of Agriculture, or unless such person removing said garbage is in possession of a document from the county department of health wherein such garbage is located stating that the person removing said garbage is authorized to dispose of such garbage in a legal manner or unless such person removing said garbage is an employee of a municipality engaged in the regular collection of garbage for said municipality. The name and address or license number of any motor vehicle of any person removing garbage other than under authorization from the county department of health, the North Carolina Department of Agriculture or a municipality, shall be reported by such operator, manager or person in charge, to the State Veterinarian within five days after the first removal of such garbage is made. (1953, c. 720, s. 7; 1971, c. 566, s. 2.)

§ 106-405.8. Enforcement of Part; rules and regulations. — The North Carolina Commissioner of Agriculture is hereby charged with the administration and enforcement of the provisions of this Part. The North Carolina Commissioner of Agriculture, by and with the consent of the State Board of Agriculture, shall have full power to cooperate with the United States Bureau of Animal Industry in the control and eradication of vesicular exanthema.

The Commissioner of Agriculture, by and with the consent of the State Board of Agriculture, shall have full power to promulgate and enforce such rules and regulations that may hereafter be necessary to carry out the provisions of this Part. (1953, c. 720, s. 8.)

§ 106-405.9. Penalties. — Any person, firm or corporation who shall knowingly violate any provisions set forth in this Part or any rule or regulation duly established by the State Board of Agriculture, or any officer or inspector who shall willfully fail to comply with any provisions of this Part shall be guilty of a misdemeanor and shall be fined or imprisoned, or both, in the discretion of the court. Such person, firm, or corporation may be enjoined from continuing such violation. (1953, c. 720, s. 9.)

§§ 106-405.10 to 106-405.14: Reserved for future codification purposes.

Part 11. Equine Infectious Anemia.

§ 106-405.15. "Equine infectious anemia" defined. — Equine infectious anemia shall mean the disease wherein an animal is infected with the virus of equine infectious anemia, irrespective of the occurrence or absence of clinical signs of the disease. An animal shall be declared infected with equine infectious anemia if it is classified as a reactor to a serological test or other test approved by the State Veterinarian. (1973, c. 1198, s. 1.)

§ 106-405.16. Animals infected with or exposed to equine infectious anemia declared subject to quarantine. — It is hereby declared that the disease of horses, ponies, mules and asses (and other equine animals) known as equine infectious anemia is of an infectious and contagious nature and that animals infected with, exposed to, or suspected of being carriers of the disease shall be subject to quarantine and identification as required by the rules and regulations of the North Carolina Department of Agriculture. (1973, c. 1198, s. 2.)

§ 106-405.17. Authority to promulgate and enforce rules and regulations. — The State Board of Agriculture shall have full power to promulgate and enforce such rules and regulations as it deems necessary for the control and eradication of equine infectious anemia. This authority shall include, but not be limited to, the power to make regulations requiring the testing of horses, ponies, mules and asses for equine infectious anemia prior to sale, exhibition or assembly at public stables or other public places, and authority to require the owner, operator or person in charge of shows, sales, public stables and other public places to require proof of freedom from equine infectious anemia before any animal is permitted to remain on the premises. (1973, c. 1198, s. 3.)

§ 106-405.18. Implementation of control and eradication program. — The control and eradication of equine infectious anemia in North Carolina shall be conducted as far as available funds will permit, and in accordance with the rules and regulations made by the Board of Agriculture. The Board of Agriculture is hereby authorized to cooperate with the U.S. Department of Agriculture in the control and eradication of equine infectious anemia. (1973, c. 1198, s. 4.)

§ 106-405.19. Violation made misdemeanor. — Any person who shall willfully move, direct the movement, or allow to be moved, from the premises where quartered any animal or animals known to be infected with equine infectious anemia, or under quarantine because of suspected exposure to equine infectious anemia, or who shall violate any provision of this Part or any rule or regulation promulgated by the Board of Agriculture under this Part shall be guilty of a misdemeanor and shall be fined not less than fifty dollars ($50.00) nor more than five hundred dollars ($500.00), or imprisoned, or both, in the discretion of the court. (1973, c. 1198, s. 5.)

ARTICLE 35.

Public Livestock Markets.

§ 106-406. Permits from Commissioner of Agriculture for operation of public livestock markets; application therefor; hearing on application. — Any person, firm or corporation desiring to operate a public livestock market within the State of North Carolina shall be required to file an application with the Commissioner of Agriculture for a permit authorizing the operation of such market; provided that, those markets operating under a valid permit and in accordance with G.S. 106-406 through 106-418 at the time this Article becomes effective shall be issued a license upon payment of the annual license fee and

upon satisfying the requirement for bonding as specified in G.S. 106-407. An application for a permit shall include the following information:

(1) The name and address of the applicant, name of market and a listing of the names and addresses of all persons having any financial interest in the proposed livestock market and the amount and nature of such interest, and such other information as is required to complete an application form supplied by the Commissioner; and

(2) The plans and specifications for the facilities proposed to be built, or for existing structures.

The application for a permit shall be accompanied by a permit fee of two hundred fifty dollars ($250.00), two hundred dollars ($200.00) of which shall be returned to the applicant if the application is denied, plus one hundred dollars ($100.00) annual permit fee for the first year of operation of the market, all of which shall be returned to the applicant if the application is denied.

Upon the filing of said application, the Commissioner shall determine whether all necessary information has been furnished. If all information required has not been furnished, the Commissioner shall notify the applicant by mail of the additional information needed; it shall be furnished the Commissioner by the applicant within 10 days of such notification. Upon receipt of all required information, the Commissioner shall fix the date of a hearing, on said application, to be held in Raleigh. Notice of the time and date of the hearing shall be published in a newspaper having general circulation in the county in which the livestock market is proposed to be located; said notice shall appear at least 10 days prior to such hearing. The applicant shall be notified by mail by the Commissioner at least 20 days prior to the hearing of the time and place of said hearing. The Commissioner shall also notify by mail the members of the Public Livestock Market Advisory Board of the time and place of said hearing, at least 10 days before the date [on] which the hearing will be held.

A public hearing shall be conducted by the Commissioner on said application. If, after the hearing, at which any person may appear in support or opposition thereto, the North Carolina Public Livestock Market Advisory Board finds that the public livestock market for which a permit or license is sought fulfills the requirements of all applicable laws, it shall issue a nontransferable permit to the applicant. If the Commissioner denies the application, the applicant may appeal within 10 days of notice of said denial to the Board of Agriculture which can uphold or reverse the Commissioner. If the Board of Agriculture upholds the Commissioner, the applicant may appeal to the Superior Court of Wake County under the procedures of Chapter 150[A] of the General Statutes. Unless revoked by the Board of Agriculture pursuant to any applicable law or regulation, permits will be renewed each July 1 on payment of the annual renewal fee. (1941, c. 263, s. 1; 1943, c. 724, s. 1; 1967, c. 894, s. 1; 1971, c. 739, s. 1; 1973, c. 1331, s. 3.)

Editor's Note. — Pursuant to Session Laws 1973, c. 1331, s. 3, effective July 1, 1975, the reference to Chapter 150[A] has been substituted for a reference to Article 33 of Chapter 143 in the fourth sentence of the last paragraph.

§ 106-407. Bonds required of operators; exemption of certain market operations. — The Commissioner of Agriculture shall require the owner of each public livestock market issued a permit under the provisions of G.S. 106-406 to furnish a bond acceptable to the Commissioner of not less than five thousand dollars ($5,000) nor more than fifty thousand dollars ($50,000), in the discretion of the Commissioner, to secure the performance of all obligations incident to the operation of the public livestock market operation including prompt payment to the vendors of all livestock sold at said market; provided, that, at the discretion

of the Commissioner of Agriculture, a bond shall not be required of a livestock market bonded under the Federal Packers and Stockyards Act.

The term "public livestock market" as used in this Article shall not be interpreted to mean any of the following:

(1) A market where horses and mules exclusively are sold;

(2) A market that sells only finished livestock to be used for immediate slaughter;

(3) A dispersal sale of livestock by a farmer, dairyman, livestock breeder, or feeder when all animals offered for sale have been owned by him at least 30 days; provided that, no more than one dispersal sale shall be held by any person, firm or corporation within any period of six months.

(4) Purebred livestock association sales and those sales where Future Farmers of America, 4-H Clubs and similar groups, State institutions, or private fairs conduct sales of livestock. (1941, c. 263, s. 2; 1967, c. 894, s. 2.)

§ 106-407.1. North Carolina Public Livestock Market Advisory Board created; appointment; membership; duties. — There is hereby created the North Carolina Public Livestock Market Advisory Board composed of eight persons, all of whom shall be residents of North Carolina, who shall be appointed and the chairman designated by the Commissioner of Agriculture on or before August 1, 1967. Two members of said Board shall be livestock producers, two shall be licensed livestock market operators, one shall be a meat packer, one shall be the State Veterinarian, one shall be a duly licensed and practicing veterinarian and one shall be an employee of the markets division of the North Carolina Department of Agriculture. On the initial Board, two members shall be appointed for terms of one year, two members for terms of two years, two members for terms of three years, and two members for terms of four years. Thereafter, all members shall serve four-year terms. Any vacancy on the Board caused by death, resignation, or otherwise, shall be filled by the Commissioner of Agriculture for the expiration of the term. The terms of all members of the initial and subsequent boards shall expire on June 30 of the year in which their terms expire.

It shall be the duty of the members of the Board to attend all hearings on applications for licenses to operate public livestock markets. It shall also be the duty of the members of the Board to meet at least once each year, or more often if directed by the Commissioner, in Raleigh or such other place in North Carolina as directed by the Commissioner for the purpose of (i) discussing problems of the livestock market industry, (ii) proposing changes in the rules and regulations of the Department of Agriculture relative to public livestock markets, and (iii) making such other recommendations to the Commissioner and the Board of Agriculture as it deems in the best interest of the livestock industry of North Carolina.

Members of the Board, except members who are employees of the State, shall receive as compensation, subsistence and travel allowances, such sums as by law are provided for other commissions and boards.

The two hundred fifty dollars' ($250.00) permit fee required by this Article and the one hundred dollars' ($100.00) annual permit fee required by this Article shall be used to defray the expenses incurred by the members of the Board in the performance of their duties and enforcement of this Article. No funds of the State of North Carolina shall be used to defray any expenses of the Board. All permit fees and annual renewal fees payable under the provisions of this Article shall be paid into the office of the auditor of the Department of Agriculture and shall be kept by said auditor in a separate account and disbursed by him according to the provisions of this Article. (1967, c. 894, s. 3.)

State Government Reorganization. — The Public Livestock Market Advisory Board was transferred to the Department of Agriculture by § 143A-65, enacted by Session Laws 1971, c. 864.

§ 106-407.2. Revocation of permit by Board of Agriculture; restraining order for violations. — The permit authorizing the operation of a public livestock market may be revoked by the North Carolina Board of Agriculture for violation of the provisions of this Article, or the rules and regulations promulgated thereunder, after the owner or operator of the public livestock market shall have been given 10 days' written notice of the alleged violation and opportunity to be heard relative thereto by the North Carolina Board of Agriculture. Such revocation may be appealed to the superior court under the provisions of Chapter 150[A] of the General Statutes.

If any person, firm or corporation shall operate a public livestock market in violation of the provisions of this Article, or the rules and regulations promulgated by the North Carolina Board of Agriculture, or shall fail to comply with the provisions of this Article, or rules and regulations promulgated thereunder, a temporary or permanent restraining order may be issued by a judge of the superior court upon application by the Commissioner of Agriculture, or his authorized representative, and the judge of the superior court shall have the same power and authority as in any other injunction proceeding, and the defendant shall have the same rights including the right of appeal, as in any other injunction proceeding heard before the superior court. (1967, c. 894, s. 4; 1973, c. 1331, s. 3.)

Editor's Note. — Pursuant to Session Laws 1973, c. 1331, s. 3, effective July 1, 1975, the reference to Chapter 150[A] has been substituted for a reference to Article 33 of Chapter 143 near the end of the first paragraph.

§ 106-408. Marketing facilities prescribed; records of purchases and sales; time of sales; notice. — All public livestock markets operating under this Article shall have proper facilities for handling livestock and such other equipment as specified by regulation of the North Carolina Board of Agriculture. Scales approved by the North Carolina Division of Weights and Measures shall be provided at public livestock markets where animals are bought, sold or exchanged by weight. The premises, including yards, pens, alleys, and chutes shall be cleaned and disinfected in accordance with regulations promulgated by the Board of Agriculture pursuant to the authority contained in G.S. 106-416. The market shall keep a complete legible permanent record, including the use of numbered invoices, showing the name and address of the person or firm from whom all animals are received and the name and address of the person or firm to whom sold. Symbols in lieu of names shall not be used. The weight, if sold by weight, and the price paid and the price received shall be recorded on the invoice. Such records as specified in this section shall be available for inspection to the Commissioner of Agriculture or his authorized representative during regular business hours.

The sales of all livestock at livestock auction markets shall start no later than 2:00 P.M.; provided, however, the Commissioner of Agriculture shall have authority to authorize a sale to begin as late as 4:00 P.M. when the sale (i) consists solely of the sale of pigs weighing no more than 150 pounds and sold as feeder pigs, (ii) continues without interruption, and (iii) last[s] no later than 5:00 P.M. The sale of livestock shall be continuous until all are sold.

Each public livestock market operator operating under this Article shall post notice of the day(s) of sale and the starting time in a conspicuous place on the market premises. In the event of subsequent changes in day of sale or starting time, the operator shall post notice on the premises and notify the State

Veterinarian in writing at least two weeks in advance of the date of change. (1941, c. 263, s. 3; 1949, c. 997, s. 1; 1961, c. 275, s. 1; 1967, c. 894, s. 5; 1969, c. 983; 1971, c. 739, s. 2.)

Local Modification. — Harnett: 1955, c. 753; Lee: 1957, c. 772; Robeson: 1951, c. 160; 1961, c. 275, s. 1(a).

§ 106-408.1. Market operation fees. — A fee of twenty-five dollars ($25.00) shall be paid by the market operator to the North Carolina Department of Agriculture for each day, or fraction thereof, a sale is held, provided that an additional maximum fee of ten dollars ($10.00) per one-half hour, or fraction thereof, shall be paid to the North Carolina Department of Agriculture for operation after 6:00 P.M. Provided further, that the Board of Agriculture may at its discretion adjust both fees for market operation within the limits set in this section. A fee to be set by the Board of Agriculture may be charged to the buyer of cattle and swine required to be tested under G.S. 106-409 and 106-410, and the amount collected used to offset the twenty-five dollar ($25.00) market operation fee. All test fees charged in excess of twenty-five dollars ($25.00) shall revert to the North Carolina Department of Agriculture and be payable within 24 hours following the close of a sale day. The starting and finishing time of each sale shall be recorded by the livestock inspector on his report of the sale. A copy of the report shall be given to the market operator or his representative following the sale. Failure to make the required payment within 24 hours following close of a sale day shall be cause for the Commissioner of Agriculture to prohibit, on 72 hours' notice, further sales at the market until the account is paid in full. The operation fee shall be waived when a livestock market operator employs a licensed, accredited veterinarian approved by the State Veterinarian to be present at the market from the starting time of the sale until all livestock to be admitted to the sales barn on that sale day have entered and such work in inspection, testing and vaccination as designated by the State Veterinarian has been completed. (1971, c. 739, s. 3.)

§ 106-409. Removal of cattle from market for slaughter and nonslaughter purposes; identification; permit needed. — No cattle except those for immediate slaughter, shall be removed from any public livestock market except in accordance with this Article and regulations adopted by the North Carolina Board of Agriculture. All cattle removed from any public livestock market for immediate slaughter shall be identified in a manner approved by the Commissioner of Agriculture and the person removing same shall before removal sign a form in duplicate showing the number of cattle, their description, and where same are to be slaughtered or resold for slaughter. Cattle sold for slaughter shall be disposed of in one of the following ways:

(1) Moved directly to a recognized slaughtering establishment for immediate slaughter.
(2) Sold to a dealer bonded under the Packers and Stockyards Act who handles cattle for immediate slaughter.
(3) Offered for resale for slaughter through a livestock auction market holding a valid permit issued under this Article.

A "buying station" of a slaughterhouse or similar business not operating under a public livestock market permit shall not allow the removal of animals for any purpose other than that of immediate slaughter unless a written permit has been secured from the State Veterinarian or his authorized representative. This provision shall not apply to buying stations operated by feedlot operators buying animals for movement to their own feedlots.

Cattle sold for immediate slaughter shall be used for no other purpose unless prior written permission has been secured from the State Veterinarian or his authorized representative. No livestock market operator, or agent or employee thereof, shall allow the removal of any cattle from a market in violation of this section. (1941, c. 263, s. 4; 1943, c. 724, s. 2; 1949, c. 997, s. 2; 1967, c. 894, s. 6.)

§ 106-410. Removal of swine from market for slaughter and nonslaughter purposes; identification; permit needed; resale for feeding or breeding; out-of-state shipment. — No swine, except those for immediate slaughter, shall be removed from any public livestock market except in accordance with regulations adopted by the North Carolina Board of Agriculture. All swine removed from any public livestock market for immediate slaughter shall be identified in a manner prescribed by regulation adopted by the North Carolina Board of Agriculture and the person removing same shall sign a form in duplicate showing the number of hogs, their description and where they are to be slaughtered or resold for slaughter. Slaughter hogs may be disposed of in one of the following ways:

(1) Moved directly to a recognized slaughter establishment for immediate slaughter.
(2) Sold to a dealer, bonded under the Packers and Stockyards Act, who handles hogs for immediate slaughter.
(3) Offered for resale for slaughter through a livestock auction market holding a valid permit issued under this Article.

Swine sold for immediate slaughter shall be used for no other purpose unless prior written permission has been secured from the State Veterinarian or his authorized representative. No market operator shall allow the removal of any swine from a market in violation of this section.

Swine for breeding or feeding purposes shall not be resold in a livestock market for other than immediate slaughter within 14 days of prior sale at a livestock market unless they are identified as having been previously sold swine at the time of resale. Such identification shall contain the date and place of the prior sale and shall be furnished in writing to the market operator by the seller of said swine.

Provided, however, that the Commissioner of Agriculture may permit swine to be shipped out of the State of North Carolina, under the same conditions as if said swine were being delivered for immediate slaughter, for immediate delivery to holding or feeding lots in any other state when he determines that said holding or feeding lots are being operated in compliance with the laws of said state and the rules and regulations promulgated thereunder. (1941, c. 263, s. 5; 1943, c. 724, s. 3; 1949, c. 997, ss. 3, 4; 1967, c. 894, s. 7; 1971, c. 739, s. 5.)

§ 106-411. Regulation of use of livestock removed from market; swine shipped out of State. — Any person or persons who shall remove, or whose agent or employee at the direction of the employer, shall remove from a public livestock market any cattle, swine, or other livestock for immediate slaughter shall use them for immediate slaughter only or resale for immediate slaughter only in compliance with this Article and the applicable regulations of the Department of Agriculture. It shall be a misdemeanor for the owner of any cattle, swine or other livestock purchased for immediate slaughter, to order, direct or procure his agent or employee to transport said cattle, swine, or other livestock to any place other than a recognized slaughter plant or as provided in G.S. 106-409 and 106-410; and the agent or employee who transports said animal or animals shall likewise be guilty of a misdemeanor.

Provided that, it shall not be a violation of law to ship swine out of this State to holding or feeding lots as provided for in G.S. 106-410. (1941, c. 263, s. 6; 1943, c. 724, s. 4; 1949, c. 997, s. 5; 1967, c. 894, s. 8.)

§ 106-412. Admission of animals to markets; quarantine of diseased animals; sale restricted; regulation of trucks, etc. — No animal known to be affected with or having visible symptoms of a contagious or infectious disease shall be received or admitted into any public livestock market except upon special permit issued by the Commissioner of Agriculture or his authorized representative. All animals affected with, or exposed to, any contagious or infectious disease of animals or any animal that reacts to an official test indicating the presence of such a disease, shall be quarantined separate and apart from healthy animals and shall not be sold, traded, or otherwise disposed of except upon written permission of the Commissioner of Agriculture or his authorized representative. All animals sold for slaughter under this provision must be moved directly to a recognized slaughter establishment with State or federal meat inspection unless written permission to do otherwise is secured from the State Veterinarian or his authorized representative. The owner of the animals shall be responsible for the cost of maintaining the quarantine, the necessary treatment, and the feed and care of the animals while under quarantine and said costs shall constitute a lien against all of said animals. All trucks, trailers, and other conveyances used in transporting livestock shall be cleaned and disinfected in accordance with the regulations issued by authority of this Article. (1941, c. 263, s. 7; 1967, c. 894, s. 9.)

§ 106-413. Sale, etc., of certain diseased animals restricted; application of Article; sales by farmers. — No person or persons shall sell or offer for sale, trade or otherwise dispose of any animal or animals that are affected with a contagious or infectious disease, or that the owner or person in charge or a livestock inspector or an approved veterinarian has reason to believe are so affected or exposed; provided, however, that upon written permission of the Commissioner of Agriculture or his authorized representative it shall be lawful to sell, trade, or otherwise dispose of such animals for immediate slaughter at a plant with State or federal meat inspection. The provisions of this Article, including those regulations adopted by the North Carolina Board of Agriculture, shall apply to all animals sold or offered for sale on any public highway, right-of-way, street, or within one-half mile of any public livestock market, or other public place; provided, that the one-half mile provision shall not apply to animals raised and owned by a bona fide farmer who is a resident of the State of North Carolina and sold or offered for sale by him. (1941, c. 263, s. 8; 1943, c. 724, s. 5; 1967, c. 894, s. 10.)

§ 106-414. Transportation, sale, etc., of diseased livestock; burden of proving health; movement to laboratory; removal of identification. — No cattle, swine, or other livestock with visible symptoms of a contagious or infectious disease shall be transported or otherwise moved on any public highway or street in this State except upon written permission of the Commissioner of Agriculture or his authorized representative. The burden of proof to establish the health of any animal transported on the public highways of this State, or sold, traded, or otherwise disposed of in any public place shall be upon the vendor. Any person who shall sell, trade, or otherwise dispose of any animal affected with, or exposed to, a contagious or infectious disease, or one he has or should have reason to believe is so affected, or exposed, shall be civilly liable for all damages resulting from such sale or trade; provided that, nothing in this section shall prevent an individual who owns or has custody of sick animals from transporting sick or dead animals to a disease diagnostic laboratory operated or approved by the North Carolina Department of Agriculture if reasonable and proper precautions to prevent the exposure of other animals is taken by the owner or transporter thereof.

It shall be a misdemeanor to remove before slaughter any ear tag, back tag, or other mark of identification approved by the Commissioner of Agriculture

for identifying animals for disease control purposes unless prior written authorization has been obtained from the State Veterinarian or his authorized representative. (1941, c. 263, s. 9; 1967, c. 894, s. 11.)

§ 106-415. Cost of tests, serums, etc. — The cost of all tests, serums, vaccines and other medical supplies necessary for the enforcement of this Article and the protection of livestock against contagious and infectious diseases shall be paid for by the owner of said livestock and the cost shall constitute a lien against all said animals; provided that, the Commissioner of Agriculture, by and with the consent of the Board of Agriculture, is hereby authorized to determine reasonable charges and costs for such tests, serums, vaccines, and other medical supplies; provided further, that an animal which shows a reaction to a test for brucellosis shall be automatically "no-saled" and resold for immediate slaughter and the cost of the test paid by the original seller. (1941, c. 263, s. 10; 1949, c. 997, s. 6; 1957, c. 1269; 1967, c. 894, s. 12.)

§ 106-416. Rules and regulations. — The Commissioner of Agriculture, by and with the consent of the State Board of Agriculture, shall have full power to promulgate and enforce such rules and regulations that may be necessary to carry out the provisions of this Article. This power shall include, but not be confined to, the authority to designate a time after which livestock shall not be allowed to enter a sales barn on the day of a sale. (1941, c. 263, s. 11; 1967, c. 894, s. 13; 1971, c. 739, s. 4.)

§ 106-417. Violation made misdemeanor; responsibility for health, etc., of animals. — Any person, firm, or corporation who shall knowingly violate any provisions set forth in this Article or any rule or regulation duly established by the State Board of Agriculture, or any officer or inspector who shall willfully fail to comply with any provisions of this Article, shall be guilty of a misdemeanor, and shall be fined or imprisoned or both, in the discretion of the court. A market operating under this Article shall not be responsible for the health or death of an animal sold through such market if the provisions of this Article have been complied with. (1941, c. 263, s. 12; 1943, c. 724, s. 6; 1967, c. 894, s. 14.)

§ 106-418. Exemption from health provisions. — The health provisions of this Article shall not apply to "no-sale" cattle offered for sale at a public livestock market by a bona fide farmer who has owned them at least 60 days. (1941, c. 263, s. $12^1/_2$; 1967, c. 894, s. 15.)

ARTICLE 35A.

North Carolina Livestock Prompt Pay Law.

§ 106-418.1. Short title. — This Article shall be known by the short title of "North Carolina Livestock Prompt Pay Law." (1973, c. 38, s. 2.)

§ 106-418.2. Legislative intent and purpose. — The purpose of the Article is to regulate the sale of livestock by auction at public livestock markets and to assure prompt payment for livestock sold. (1973, c. 38, s. 1.)

§ 106-418.3. Definitions. — As used in this Article, unless the context clearly requires otherwise:

(1) "Banking business day" means a day in which banks are normally open for business in North Carolina.
(2) "Commissioner" means the Commissioner of Agriculture of North Carolina or his designated agent or agents.
(3) "Custodial accounts" means custodial accounts for trust funds as explained in the Code of Federal Regulations, January 1, 1972, § 201.42.

(4) The "North Carolina Public Livestock Market Advisory Board" means the Board established under G.S. 106-407.1.
(5) "Public livestock market" means livestock sales at a market duly licensed under G.S. 104-406 [106-406]. (1973, c. 38, s. 3.)

§ 106-418.4. Duties of Commissioner. — The Commissioner shall regulate, by and with the consent of the Board of Agriculture as provided herein, the payment for livestock sold at auction. (1973, c. 38, s. 4.)

§ 106-418.5. Collection of payment. — Collection of payment for livestock purchased at auction shall be made by the public livestock market on the same date of purchase of the livestock, and the proceeds therefrom shall be deposited by the public livestock market in their custodial account not later than the next banking business day following the date of sale. Collection for livestock purchased by auction shall be made by cash, check, or draft. There shall be no loans made from the custodial account of any public livestock market to any purchaser of livestock at said sales establishment. Payment shall be made by the public livestock market to the seller of livestock at auction not later than one banking business day after the date of sale of the animal or animals. (1973, c. 38, s. 5.)

§ 106-418.6. Action upon failure of payment. — It shall be the duty and responsibility of each public livestock market to report to the Commissioner within 24 hours after having knowledge that a check or draft issued in payment for livestock has been dishonored or that a buyer of livestock at auction has not fulfilled his obligation to pay for livestock within the prescribed time in G.S. 106-418.5. It shall be the duty and responsibility of the Commissioner to notify all public livestock markets of the fact of dishonor of any such check issued or the failure to honor any draft upon presentation used in payment for livestock or due to the lack of satisfactory payment for livestock. (1973, c. 38, s. 6.)

§ 106-418.7. Authority of Board of Agriculture, North Carolina Public Livestock Advisory Board and the Commissioner. — The Board of Agriculture shall establish rules and regulations pertaining to the purchase and payment of livestock sold in this State at public livestock markets. The North Carolina Public Livestock Advisory Board shall recommend rules and regulations pertaining to the administration of this Article to the Board of Agriculture for their consideration. The Commissioner is authorized to revoke any livestock market operator's license issued or to refuse to issue a livestock market license to any person as hereinafter provided upon satisfactory proof that said person has repeatedly violated any of the provisions of this Article or any of the rules and regulations made and promulgated thereunder; provided that no license shall be revoked or refused until the person, firm or corporation shall have first been given an opportunity to appear at a hearing before the Commissioner or his agent. Any person who is refused a license, or whose license is revoked by any order of the Commissioner, may appeal within 30 days from said order to the Superior Court of Wake County or the superior court of the county of his residence. (1973, c. 38, s. 7.)

ARTICLE 35B.

Livestock Dealer Licensing Act.

§ 106-418.8. Definitions. — When used in this Article,
(1) The term "Commissioner" means the Commissioner of Agriculture of North Carolina;
(2) The term "livestock" means cattle, sheep, goats, swine, horses and mules;

(3) The term "livestock dealer" means any person who buys livestock (i) for his own account for purposes of resale, or (ii) for the account of others; and

(4) The term "person" means an individual, partnership, corporation, association, or other legal entity. (1973, c. 196.)

§ 106-418.9. Exemptions. — The provisions of this Article shall not apply to a person who offers for sale or trade only livestock which he has raised or livestock which he owns or has had in his possession for a period of 30 days or longer or who has had the livestock grown under contract, and is not engaged in the business of buying, selling, trading, or negotiating the transfer of livestock. Neither shall this Article apply to a livestock market operator conducting sales in compliance with the Public Livestock Markets Act (General Statutes Chapter 106, Article 35). (1973, c. 196.)

§ 106-418.10. Prohibited conduct. — It shall be unlawful for any person to:

(1) Carry on or conduct the business of a livestock dealer without a current valid license issued by the North Carolina Department of Agriculture under the provisions of this Article;

(2) Fail to keep the records required by G.S. 106-418.13. (1973, c. 196.)

§ 106-418.11. Licenses. — (a) Any person desiring to be licensed as a livestock dealer shall make application to the Commissioner. Such application shall contain the address, both business and personal, of the applicant. No financial information shall be required from the applicant.

Whenever an applicant has complied with this Article, the Commissioner shall issue to such applicant a license which shall entitle the licensee to engage in the business of livestock dealer for a period of one year, unless such license is sooner suspended, or revoked in accordance with the provisions of this Article.

The license may be renewed annually by written request to the Commissioner on a form prepared by the Department of Agriculture which form shall require only the name and current address of the license. No renewal fee shall be charged.

(b) The Commissioner may suspend for a period not to exceed 120 days the license of any livestock dealer whom the Commissioner finds has violated G.S. 106-418.10(2). For a second violation of G.S. 106-418.10(2) within a period of two years, the Commissioner may revoke a dealer's license.

(c) The Commissioner may refuse to issue a license to any person who has (i) within five years of his application therefor, been finally adjudicated as having on two or more occasions violated the provisions of G.S. 106-418.10(1) or (ii) on three or more occasions within five years of his application therefor been finally adjudicated as violating G.S. 106-418.10(2).

(d) All proceedings relative to the suspension, revocation, or refusal of a license shall be conducted pursuant to the provisions of Chapter 150[A] of the General Statutes. (1973, c. 196; c. 1331, s. 3.)

Editor's Note. — In the third paragraph of subsection (a) of this section, it would seem that the word "license" at the end of the first sentence should be "licensee."

Pursuant to Session Laws 1973, c. 1331, s. 3, effective July 1, 1975, the reference to Chapter 150[A] has been substituted for a reference to Chapter 150 in subsection (d).

§ 106-418.12. Hearings. — Any hearing required or permitted to be held pursuant to this Article may be conducted by the Commissioner or his delegate and his decision shall be treated for all purposes as that of the Commissioner. (1973, c. 196.)

§ 106-418.13. Maintenance of records. — Every livestock dealer shall keep complete records for at least one year of all transactions involving livestock and

permit any authorized agent of the Commissioner to have access to and to copy all records relating to such transactions. Such records shall consist of the approximate age, breed and species of the livestock, the date of sale, name and address of persons from whom and to whom livestock are sold and traded. (1973, c. 196.)

§ 106-418.14. Penalties. — Any person who violates G.S. 106-418.10 (1) may be fined not in excess of one hundred dollars ($100.00) or imprisoned for not in excess of 30 days. For a second or subsequent violation of G.S. 106-418.10(1), a person may be fined not in excess of five hundred dollars ($500.00) or imprisoned for not in excess of six months, or both fined and imprisoned. (1973, c. 196.)

§ 106-418.15. Short title. — This Article may be cited as the "Livestock Dealer Licensing Act." (1973, c. 196.)

ARTICLE 36.

Plant Pests.

§ 106-419. Plant pest defined. — A plant pest is hereby defined to mean any insect, mite, nematode, other invertebrate animal, disease, noxious weed, plant or animal parasite in any stage of development which is injurious to plants and plant products. (1957, c. 985.)

§ 106-419.1. Plants, plant products and other objects exposed to plant pests. — Any plant, plant product, object or article which has been, or which the Commissioner of Agriculture or his agents have reasonable grounds to believe has been exposed to a plant pest, may be treated as a plant pest for the purposes of this Article. (1971, c. 526.)

§ 106-420. Authority of Board of Agriculture to adopt regulations. — The Board of Agriculture is hereby authorized to adopt reasonable regulations to implement and carry out the purposes of this Article as to eradicate, repress and prevent the spread of plant pests (i) within the State, (ii) from within the State to points outside the State, and (iii) from outside the State to points within the State. The Board of Agriculture shall adopt regulations for eradicating such plant pests as it may deem capable of being economically eradicated, for repressing such as cannot be economically eradicated, and for preventing their spread within the State. Regulations may provide for quarantine of areas. It may also adopt reasonable regulations for preventing the introduction of dangerous plant pests from without the State, and for governing common carriers in transporting plants, articles or things liable to harbor such pests into, from and within the State. The Board is authorized, in order to control plant pests, to adopt regulations governing the inspection, certification and movement of nursery stock, (i) into the State from outside the State, (ii) within the State, and (iii) from within the State to points outside the State. The Board is further authorized to prescribe and collect a schedule of fees to be collected for its nursery inspection, nursery dealer certification, and narcissus bulb inspection activities. (1957, c. 985.)

Cross Reference. — See § 106-22(5).

§ 106-420.1. Agreements against plant pests. — The North Carolina Board of Agriculture is authorized to enter into agreements with any agency of the United States or any agency of another state for the eradication, suppression, control and prevention of spread of plant pests. The Commissioner of

Agriculture is authorized to enter into agreements with any unit of local government in this State or any organization incorporated or unincorporated who has an interest in the control of plant pests for the eradication, suppression, control and prevention of spread of plant pests. (1971, c. 526.)

§ 106-421. Permitting uncontrolled existence of plant pests; nuisance; method of abatement. — No person shall knowingly and willfully keep upon his premises any plant or plant product infested or infected by any dangerous plant pest, or permit dangerous plants or plant parasites to mature seed or otherwise multiply upon his land, except under such regulations as the Board of Agriculture may prescribe. All such infested or infected plants and premises are hereby declared public nuisances. The owner of such plants or premises shall, when notified to do so by the Commissioner of Agriculture, take such measures as may be prescribed to eradicate such pests. The notice shall be in writing and shall be mailed to the usual or last known address, or left at the ordinary place of business, of the owner or his agent. If such person fails to comply with such notice within such reasonable time as the notice prescribes, the Commissioner of Agriculture, through his duly authorized agents, shall proceed to take such measures as shall be necessary to eradicate such pests, and shall compute the actual costs of labor and materials used in eradicating such pests, and the owner of the premises in question shall pay to the Commissioner of Agriculture such assessed costs. No damages shall be awarded the owner of such premises for entering thereon and destroying or otherwise treating any infected or infested plants or soil when done by the order of the Commissioner of Agriculture. (1957, c. 985.)

§ 106-422. Agents of Board; inspection. — The Commissioner of Agriculture shall be the agent of the Board in enforcing these regulations, and shall have authority to designate such employees of the Department as may seem expedient to carry out the duties and exercise the powers provided by this Article. Persons collaborating with the Division of Entomology may also be designated by the Commissioner of Agriculture as agents for the purpose of this Article. The Commissioner of Agriculture, and any duly authorized agent of the Commissioner, shall have the authority to inspect vehicles or other means of transportation and its cargo suspected of carrying plant pests and to enter upon and inspect any premises between the hours of sunrise and sunset during every working day of the year to determine the presence or absence of injurious plant pests. Any duly authorized agent of the Commissioner shall have authority to stop or cause to be stopped on any highway or other public place, by any law-enforcement officer at the request of said authorized agent of the Commissioner, any vehicle or other means of transportation that is being used, or that the representative of the Commissioner has reasonable grounds to believe is being used, to transport or move any plant, plant product or seed in violation of the provisions of this Article. (1957, c. 985; 1967, c. 976.)

§ 106-423. Nursery inspection; nursery dealer's certificate; narcissus inspection. — The Board of Agriculture shall have the authority to define nursery stock. The Commissioner of Agriculture shall have the right to cause all plant nurseries, and narcissus bulb fields where narcissus bulbs are commercially raised, within the State to be inspected at least once each year for serious plant pests. Every person, firm or corporation buying and reselling nursery stock shall register and secure a dealer's certificate for each location from which plants are sold. (1957, c. 985.)

§ 106-423.1. Criminal penalties; violation of laws or regulations. — If anyone shall attempt to prevent inspection of his premises as provided in the preceding sections, or shall otherwise interfere with the Commissioner of Agriculture, or any of his agents, while engaged in the performance of his duties

under this Article, or shall violate any provisions of this Article or any regulations of the Board of Agriculture adopted pursuant to this Article, he shall be guilty of a misdemeanor and shall be fined not less than five ($5.00) nor more than fifty dollars ($50.00), or imprisoned for not less than 10 nor more than 30 days, for each offense. Each day's violation shall constitute a separate offense. (1957, c. 985.)

ARTICLE 37.

Cotton Grading.

§ 106-424. Federal standards recognized. — The standards or grades of cotton established or which may be hereafter established by the Secretary of Agriculture by virtue of acts of Congress shall be recognized as the standards in transactions by and between citizens of this State in transactions relating to cotton. (1915, c. 23, s. 1; C. S., s. 4901.)

§ 106-425. Duplicates of federal samples may be used. — The Commissioner of Agriculture shall obtain from the Secretary of Agriculture a duplicate of each of these samples as represent cotton produced in this State for the use of the citizens of the State who may desire to use them in settlement of any disputed transaction. (1915, c. 23, s. 2; C. S., s. 4902.)

§ 106-426. Expert graders to be employed; cooperation with United States Department of Agriculture. — The North Carolina Department of Agriculture shall have authority to employ expert cotton graders to grade cotton in this State under such rules and regulations as it may adopt. The North Carolina Department of Agriculture may seek the aid of the United States Department of Agriculture in the prosecution of this work, and shall have authority to enter into such contracts or arrangements as shall be mutually agreeable in furtherance of the object and purpose of this Article. (1915, c. 175, s. 1; C. S., s. 4903; 1967, c. 24, s. 27.)

§ 106-427. County commissioners to cooperate. — Any board of commissioners of any county in North Carolina is authorized and empowered to cooperate with the North Carolina Department of Agriculture in aid of the purposes of this Article; and shall have authority to appropriate such sums of money as the said board shall deem wise and expedient. (1915, c. 175, s. 2; C. S., s. 4904; 1967, c. 24, s. 27.)

§ 106-428. Grading done at owner's request; grades as evidence. — The expert graders employed by the North Carolina Department of Agriculture, or by the United States government, shall have full right, power, and authority to grade any cotton in North Carolina upon the request of the owner of said cotton; and said graders shall grade and classify, agreeable to and in accordance with the standards or grades of cotton which are now or may hereafter be established by the Secretary of Agriculture by virtue of any act of Congress. The grade, or classification, pronounced by said expert graders of all cotton graded by them shall be prima facie proof of the true grade or classification of said cotton, and shall be the basis of all cotton sales in this State. (1915, c. 175, s. 3; C. S., s. 4905; 1967, c. 24, s. 27.)

§ 106-429. Grader's certificate admissible as evidence. — In the event of any dispute or trial pending in any of the courts of this State, the certificate of any expert grader, employed as above provided, and acknowledged or proven before any clerk of the superior court of any county in the State, shall be admissible in evidence as to the grade or classification of cotton graded or classified by said expert. (1915, c. 175, s. 4; C. S., s. 4906.)

ARTICLE 38.

Marketing Cotton and Other Agricultural Commodities.

§ 106-429.1. Short title. — The provisions of this Article may be known and designated as the "North Carolina Agricultural Warehouse Act." (1965, c. 1029, s. 2.)

Cited in State v. Woodcock, 17 N.C. App. 242, 193 S.E.2d 759 (1973).

§ 106-430. Purpose of law. — In order to protect the financial interests of North Carolina by stimulating the development of an adequate warehouse system for cotton and other agricultural commodities, in order to enable growers of cotton and other agricultural commodities more successfully to withstand and remedy periods of depressed prices, in order to provide a modern system whereby cotton and other agricultural commodities may be more profitably and more scientifically marketed, and in order to give these products the standing to which they are justly entitled as collateral in the commercial world, a warehouse system for cotton and other agricultural products in the State of North Carolina is hereby established as hereinafter provided. (1919, c. 168, s. 1; 1921, c. 137, s. 1; C. S., s. 4925(a); 1941, c. 337, s. 1.)

Editor's Note. — The 1941 act, amending several sections of this Article and inserting § 106-439, provides that its provisions shall not apply to the storage of tobacco in any form.

Prior Law. — For a full discussion of the purpose and application of the former statutes, see Bickett v. State Tax Comm'n, 177 N.C. 433, 99 S.E. 415 (1919).

Stated in Ellison v. Hunsinger, 237 N.C. 619, 75 S.E.2d 884 (1953).

§ 106-431. Definition of "other agricultural commodities". — The term "other agricultural commodities" as used in this Article shall mean such agricultural commodities other than cotton as shall be designated by the Board of Agriculture, through rules and regulations adopted pursuant to this Article, as suitable to be stored in the warehouses operating under this Article. (1941, c. 337, s. $1^1/_2$.)

Cited in Lacy v. Hartford Accident & Indem. Co., 193 N.C. 179, 136 S.E. 359 (1927); Champion Shoe Mach. Co. v. Sellers, 197 N.C. 30, 147 S.E. 674 (1929).

§ 106-432. Board of Agriculture administers law, makes rules, appoints superintendent. — The provisions of this Article shall be administered by the State Board of Agriculture, through a suitable person to be selected by said Board, and known as the State warehouse superintendent. In administering the provisions of this Article the Board of Agriculture is empowered to make and enforce such rules and regulations as may be necessary to make effective the purposes and provisions of this Article, and to fix and prescribe reasonable charges for storing cotton and other agricultural commodities in the local warehouses and publish the same from time to time as it may deem necessary. (1919, c. 168, s. 2; 1921, c. 137, s. 2; C. S., s. 4925(b); 1941, c. 337, s. 2.)

Stated in Ellison v. Hunsinger, 237 N.C. 619, 75 S.E.2d 884 (1953).

§ 106-432.1. When employer-employee relationship deemed to exist; when person deemed employee, agent or officer of State, Board, superintendent or system. — For the purposes of this Article, the relationship and status of employer-employee shall be deemed to exist only: when created and subsisting under an express contract of employment, written or oral; for a term, or terminable at the will of the employer; wherein the right to make and enter into the contract of hire or employment, and the right to fire, or to discharge, either at will or for cause reserved in the contract of employment, shall remain with the employer, with respect to the person employed; and the right to prescribe, direct, supervise and closely control the duties of the employee and the discharge of his duties of employment, remains substantially with the employer; and where the compensation of the employee is determined, pursuant to contract or otherwise, by the employer and paid wholly or in part from funds of the employer or funds controlled, at least in part, by and available to him.

No person functioning under or pursuant to this Article shall be deemed an employee or agent or officer of the State of North Carolina, the State Board of Agriculture, the State warehouse superintendent, or of the State warehouse system, as such: unless in this Article and in pertinent regulations and in an express contract, specifically made and designated an employee or agent of the State or State agency (whether as an assistant, manager, inspector, grader, or classer) and unless actually engaged in and within the scope of his duties as an employee, official, or agent of the State of North Carolina, the Board, the superintendent or the system; and unless such person is compensated in whole or in part from funds of or within the control of the State of North Carolina; and unless subject to the right of the State or any of the State agencies, officers and instrumentalities mentioned, to engage, employ or hire him and to terminate his employment or agency, or to contract with him with respect to the terms and conditions and termination of his agency or employment; and unless subject to the direct control of the State of North Carolina or any of its officers, agencies or entities, with respect to fixing, supervising and controlling his duties of employment or agency. (1965, c. 1029, s. 3.)

§ 106-433. Employment of officers and assistants; licensing private facilities as components of warehouse system; licensing employees of private facilities. — (a) The Board of Agriculture shall have authority to employ a warehouse superintendent and necessary assistants, local managers, examiners, inspectors, expert cotton classers, and such other employees as may be necessary in carrying out the provisions of this Article, and fix and regulate their duties.

(b) The Board of Agriculture acting through the State warehouse superintendent is authorized, from time to time, to license privately owned or operated warehouse facilities as component units of the State warehouse system (whether under a lease of such facilities from the State or not) to operate under and pursuant to the provisions of this Article, and to require or permit such licensed warehouse facility to operate and function as a component of the State warehouse system and to subordinate and maintain the licensed warehouse operation (subject to the supervision and regulation of the State warehouse superintendent) under the United States Warehouse Act, and regulations thereunder, as referred to in G.S. 106-450. Licensing and operation requirements of such licensed component warehouse facilities of the State warehouse system may be determined and regulated generally by rules and regulations prescribed by the Board, and the State warehouse superintendent may, in addition, prescribe special rules, regulations, and conditions applicable to the particular licensed warehouse facility. Any license issued by the Board from time to time may be canceled, revoked, or suspended in the unfettered discretion of the Board or the State warehouse superintendent, with or without cause. Such cancellation, revocation, termination or suspension shall also have the immediate

effect of terminating, revoking, canceling or suspending the operation of the warehouse facility as a component unit in the State warehouse system under the United States Warehouse Act and federal regulations issued thereunder. The Board of Agriculture or the State warehouse superintendent may, in their discretion, require and issue, and from time to time revoke, cancel, terminate or suspend, a license for individual warehouse superintendents, managers, examiners, inspectors, classers, and any other employees of privately owned and licensed warehouse facilities, and may generally fix and regulate their duties. The Board of Agriculture or the State warehouse superintendent may, in their unfettered discretion, take any action, with respect to such employees, deemed necessary to insure, or safeguard, or protect the State warehouse system, and to better carry out and enforce the provisions of this Article, and those provisions of the United States Warehouse Act and regulations thereunder which may be incumbent upon the Board or the superintendent. Such individuals, whether licensed or not, shall not be employees or agents of the "State" (which is defined for the purposes of this section to mean and include the State of North Carolina, the State Board of Agriculture, the State warehouse superintendent, or the State warehouse system). (1919, c. 168, s. 3; 1921, c. 137, s. 3; C. S., s. 4925(c); 1965, c. 1029, s. 4.)

Stated in Ellison v. Hunsinger, 237 N.C. 619, 75 S.E.2d 884 (1953).

§ 106-434. Bonds of superintendent, State employees and private warehouse facilities and their employees. — The person named as State warehouse superintendent shall give bond to the State of North Carolina in the sum of fifty thousand dollars ($50,000) to guarantee the faithful performance of his duties, the expense of said bond to be paid by the State, to be approved as other bonds for State officers. The State warehouse superintendent shall, to safeguard the interests of the State, require bonds from other State employees or agents authorized in G.S. 106-433(a), and may, both for the purpose of safeguarding the interests of the State and of depositors of agricultural commodities with valid, subsisting, and duly authenticated official negotiable warehouse receipts issued under and pursuant to G.S. 106-441, or the pledgee or transferee of such official negotiable warehouse receipts under G.S. 106-442, require bonds with corporate surety from privately owned and licensed warehouse facilities and from warehouse superintendents, managers and other employees of the licensed warehouse facilities authorized under G.S. 106-433(b). All such bonds shall be in such ample penal sums and secured by corporate surety authorized to do business in the State of North Carolina, as the State warehouse superintendent may direct and find that ordinary business experience in such matters would require. Such bonds shall be made as part of the blanket bond of State officers and employees provided for in G.S. 128-8. (1919, c. 168, s. 4; 1921, c. 137, s. 4; C. S., s. 4925(d); 1965, c. 1029, s. 5; 1969, c. 844, s. 9.)

Liability for Loss as Affected by Negligence. — The larceny or loss of cotton from a warehouse through no fault of the warehouseman does not relieve his bond of liability, for a warehouseman is an insurer. Lacy v. Hartford Accident & Indem. Co., 193 N.C. 179, 136 S.E. 359 (1927).

Fraudulent Negotiation of Warehouse Receipt. — Where the superintendent of a warehouse delivers cotton, takes the endorsed receipts and, instead of canceling them, negotiates a loan for his own benefit, pledging the receipts as collateral, this is a clear breach of his duty for which an action on his bond will lie. Lacy v. Globe Indem. Co., 189 N.C. 24, 126 S.E. 316 (1925).

Stated in Ellison v. Hunsinger, 237 N.C. 619, 75 S.E.2d 884 (1953).

§ 106-435. Fund for support of system; collection and investment. — In order to provide a sufficient indemnifying or guarantee fund to cover any loss not covered by the bonds hereinbefore mentioned, in order to provide the financial backing which is essential to make the warehouse receipt universally acceptable as collateral, and in order to provide that a State warehouse system intended to benefit all cotton growers in North Carolina shall be supported by the class it is designed to benefit, it is hereby declared: that on each bale of cotton ginned in North Carolina during the period from the ratification of this bill until June 30, 1922, twenty-five cents (25¢) shall be collected through the ginner of the bale and paid into the State treasury, to be held there as a special guarantee or indemnifying fund to safeguard the State warehouse system against any loss not otherwise covered. The State Tax Commission shall provide and enforce the machinery for the collection of this tax, which shall be held in the State treasury to the credit of the State warehouse system. Not less than ten per centum (10%) of the entire amount collected from the per bale tax shall be invested in United States government or farm loan bonds or North Carolina bonds, and the remainder may be invested in amply secured first mortgage notes or bonds to aid and encourage the establishment of warehouses operating under this system, and to aid and encourage the establishment of farm markets designed to serve the marketing, packaging, and grading needs for the sale and distribution of unprocessed farm commodities when adequate markets are not otherwise provided. Such investments shall be made by the Board of Agriculture, with the approval of the Governor and Attorney General: Provided, such first mortgages shall be for not more than one half the actual value of the warehouse property covered by such mortgages, and run not more than 10 years: Provided further, that the interest received from all investments shall be available for the administrative expense of carrying into effect the provisions of this law, including the employment of such persons and such means as the State Board of Agriculture in its discretion may deem necessary: Provided further, that the guarantee fund, raised under the provisions of sections 4907 to 4925 of the Consolidated Statutes of 1919, shall become to all intents and purposes a part of guarantee fund to be raised under this law and subject to all the provisions hereof. (1919, c. 168, s. 5; 1921, c. 137, s. 5; Ex. Sess. 1921, c. 28; C. S., s. 4925(e); 1957, c. 1091.)

Constitutionality. — The tax contemplated under this section, being uniform upon those of the class designated, and being laid upon a trade, whether that of cotton ginning or farming, is within the authority conferred on the legislature to further "tax trades," etc., and is constitutional. Bickett v. State Tax Comm'n, 177 N.C. 433, 99 S.E. 415 (1919).

Proper Parties in Action to Enforce Section. — The Governor, the State Board of Agriculture, and the the State warehouse superintendent are proper parties plaintiff in an action against the members of the State Tax Commission to require them to provide and enforce the machinery for the collection of the tax provided by this Article. Bickett v. State Tax Comm'n, 177 N.C. 433, 99 S.E. 415 (1919).

Liability of Fund Is Secondary. — A judgment against defendants who had deposited cotton and received negotiable warehouse receipts without disclosing that the cotton was a portion of crops included in recorded liens held by plaintiff, and a judgment against the State Treasurer to be paid from the fund provided by this section, should provide that the liability of the defendants depositing the cotton is primary and the liability of guaranty fund is secondary. Ahoskie Prod. Credit Ass'n v. Whedbee, 251 N.C. 24, 110 S.E.2d 795 (1959).

Recovery on Bond. — Where a warehouse superintendent fraudulently negotiates spent warehouse receipts and the bona fide holder thereof recovers from the indemnifying fund provided by this section, the State may recover on the bond of the superintendent. The bond is the fund primarily liable. Lacy v. Globe Indem. Co., 189 N.C. 24, 126 S.E. 316 (1925). See Ellison v. Hunsinger, 237 N.C. 619, 75 S.E.2d 884 (1953).

Loss Due to Failure to Issue Receipt Not Recoverable from State Treasurer. — A recovery may not be had against the State Treasurer out of the fund accumulated under this section, for a loss resulting to plaintiff by failure of a warehouse to issue official receipts for cotton to plaintiff as agreed, the receipts having been issued to the holder of a lien against the cotton and the warehouse having refused delivery of the cotton to plaintiff upon his demand, since the

purpose of the statute is to make warehouse receipts acceptable as collateral, and plaintiff is not the holder of the receipts. Northcutt v. People's Bonded Warehouse Co., 206 N.C. 842, 175 S.E. 165 (1934).

Cited in Harris v. Fairley, 232 N.C. 551, 61 S.E.2d 616 (1950).

§ 106-436. Registration of gins; gin records and reports; payment of tax. — If the special levy authorized by G.S. 106-446 is made, it shall be the duty of the Commissioner of Agriculture to require the registration of all gins operating within the State, and to furnish the certificates of registration, numbered serially, free upon application; and each person, firm, partnership, or corporation receiving the said certificate of registration shall post it conspicuously in the gin to which it applies. For failure to make application and secure such certificate of registration, and to post same as required in this section, before beginning operation, each person, firm, partnership, or corporation shall be subject to a penalty of five dollars ($5.00) for each and every day such gin shall be operated prior to securing and posting such certificate of registration. The penalty herein provided for shall be recovered by the State in a civil action to be brought by the State Commissioner of Agriculture in any court of competent jurisdiction, and it shall be the duty of the Attorney General to prosecute all such actions. Each person, firm, partnership, or corporation operating a gin shall keep a record, on forms furnished or approved by the Commissioner of Agriculture, showing the names and addresses of the owners of the cotton ginned, the number of bales ginned, and the date of each ginning; and each such operator of a gin shall report the number of bales ginned, and pay the tax levied in G.S. 106-435 to the State at least once every 30 days after beginning operation, and shall send a true copy of the report to the Commissioner of Agriculture. (1921, c. 137, s. 6; C. S., s. 4925(f).)

§ 106-437. Qualifications of warehouse manager. — No otherwise qualified person shall be qualified as manager of a warehouse unless the members of the board of county commissioners and the president of some bank in the county in which the warehouse is operated shall certify to the State warehouse superintendent that the person desiring to be warehouse manager is in their opinion a man of good character, competent, and of good reputation, deserving the confidence of the people. (1919, c. 168, s. 6; 1921, c. 137, s. 7; C. S., s. 4925(g); 1965, c. 1029, s. 6.)

Obligations of Warehouse Manager. — For obligations assumed by the manager of a warehouse operating pursuant to the provisions of this Article, see Ahoskie Prod. Credit Ass'n v. Whedbee, 251 N.C. 24, 110 S.E.2d 795 (1959).

§ 106-438. Warehouse superintendent to accept federal standards. — The State warehouse superintendent shall accept as authority the standards and classifications of cotton established by the federal government. (1919, c. 168, s. 9; 1921, c. 137, s. 8; C. S., s. 4925(h).)

§ 106-439. Leasing and licensing of property by superintendent; manner of operating warehouse system. — The State warehouse superintendent shall have the power to lease for State operation by State employees and for stated terms property for the warehousing by the State of cotton and other agricultural commodities. The State warehouse superintendent shall also have the power to lease from, and to license private or corporate warehouse property for the warehousing of such agricultural commodities under State license, general supervision and control, as a component unit of the State warehouse system. The terms and conditions of the State license shall prevail over the stated terms and conditions of the lease. In no event, however, regardless of the terms and

conditions of the lease, shall any rental be paid by the State until the operating expenses of the leased warehouse facility shall have been paid from the income from the leased warehouse facility. The State shall not be responsible in any case for the payment of rental, except from the income of any leased warehouse facility in excess of the operating expenses of the facilities. The State warehouse superintendent shall fix the terms upon which private or corporate warehouses may be permitted to operate under State license and supervision, and obtain the benefits thereof, regardless of the terms and conditions of any lease agreement between the private or corporate warehouse and the State. It shall be his special duty to foster and encourage the erection of warehouses in the various cotton-growing and agricultural counties of the State for operation under the terms of this Article, and to provide an adequate system of inspection, and of rules, forms, and reports to insure the security of the system, such matters to be approved by the State Board of Agriculture. The violation of such rules shall be a misdemeanor. Cotton and other agricultural products may be stored in such warehouses by any person owning them, and receive all of the benefits accruing from operation of such warehouses under direct State management, or as the case may be, under State license, general supervision and regulation, as component units of the State warehouse system and any person permitted to store cotton or other products in any such warehouse shall pay to the manager of the warehouse such sum or sums for rent or storage as may be agreed upon, subject to G.S. 106-432, by the manager, and such person desiring storage therein. (1919, c. 168, s. 10; 1921, c. 137, s. 9; C. S., s. 4925(i); 1941, c. 337, s. 3; 1965, c. 1029, s. 7.)

Stated in Ellison v. Hunsinger, 237 N.C. 619, 75 S.E.2d 884 (1953).

Cited in Harris v. Fairley, 232 N.C. 551, 61 S.E.2d 616 (1950).

§ 106-440. Power of superintendent to sue or to be sued; liability for tort. — The said superintendent shall also have the power to sue, or to be sued, in the courts of this State in his official capacity, but not as an individual, except in case of tort or neglect of duty, when the action shall be upon his bond. Suits may be brought in the County of Wake or in the county in which the cause of action arose. (1919, c. 168, s. 11; 1921, c. 137, s. 10; C. S., s. 4925(j).)

Stated in Ellison v. Hunsinger, 237 N.C. 619, 75 S.E.2d 884 (1953).

§ 106-441. Grading and weighing of products; negotiable receipts; authentication of receipts. — When agricultural commodities other than cotton have been stored in warehouses operated under this Article and have been graded and standardized in conformity with the grades and standards heretofore or hereafter promulgated by the Board of Agriculture, acting under the provisions of G.S. 106-185 to 106-196, negotiable warehouse receipts of form and design approved by the Board of Agriculture may be issued. As soon as possible after any lint cotton, property baled, is received for storage, the local manager shall, if it has not been done previously, have it graded and stapled by a federal or State classifier and legally weighed. Official negotiable receipts of the form and design approved by the Board of Agriculture shall be issued for such cotton under the seal and in the name of the State of North Carolina, stating the location of the warehouse, the name of the manager, the mark on said bale, the weight, the grade, and the length of the staple, so as to be able to deliver on surrender of the receipt the identical cotton for which it was given. On request of the depositor, negotiable receipts may be issued under this section omitting the statement of grade or staple, such receipt to be stamped on its face, "Not

graded or stamped on request of the depositor." The warehouse manager shall fill in receipts issued under this section and they shall be signed by him or in his name by his duly authorized agent, and by the State warehouse superintendent or in the name of the State warehouse superintendent by his duly authorized licensee, State employee, or State agent. If the local manager cannot issue a negotiable receipt complete for cotton or other agricultural commodities, he shall issue nonnegotiable memorandum receipts therefor, said memorandum receipts to be taken up and marked "Canceled" by the local manager upon the delivery of negotiable receipts for such commodities. If the official negotiable receipt is issued for cotton or other agricultural commodities of which the manager is the owner, either solely or jointly or in common with others, the fact of such ownership must appear on the face of the receipt. No responsibility is assumed by the State warehouse system for fluctuation in weight or grade or quality due to natural causes; but in other respects the receipts issued under this section for cotton and other agricultural commodities shall be supported and guaranteed by the indemnifying fund provided in G.S. 106-435. (1919, c. 168, s. 12; 1921, c. 137, s. 11; C. S., s. 4925(k); 1925, c. 225; 1941, c. 337, s. 4; 1965, c. 1029, s. 8.)

Warehouseman as Insurer. — Where under a contract of bailment the bailee receives certain bales of cotton and stores them in his warehouse, under agreement to return the identical bales upon return of the warehouse receipts in the manner provided in the contract, the liability of the bailee is that of insurer, and it is liable in damages when it is prevented by theft from performing its contract, though without negligence on its part. Lacy v. Hartford Accident & Indem. Co., 193 N.C. 179, 136 S.E. 359 (1927), decided under former law.

Stated in Ellison v. Hunsinger, 237 N.C. 619, 75 S.E.2d 884 (1953).

§ 106-442. Transfer of receipt; issuance and effect of receipt. — The official negotiable receipt issued under G.S. 106-441 for cotton or other agricultural commodity so stored is to be transferable by written assignment and actual delivery, and the cotton or other agricultural commodity which it represents is to be deliverable only upon a physical presentation of the receipt, which is to be marked "Canceled," with date of cancellation, when the cotton or other agricultural commodity is taken from the warehouse. The said official negotiable receipt carries absolute title to the cotton or other agricultural commodity, and it is the duty of the local manager accepting same for storage to satisfy himself that the depositor has good title to the same. (1921, c. 137, s. 12; C. S., s. 4925(l); 1941, c. 337, s. 5; 1955, s. 523.)

"Satisfy Himself". — This section requires the local manager to satisfy himself, which implies that he must act as a prudent person and exercise reasonable care under existing conditions. Ahoskie Prod. Credit Ass'n v. Whedbee, 251 N.C. 24, 110 S.E.2d 795 (1959).

Sale by Wrongdoer to Innocent Purchaser. — Where wrongdoer obtained cotton by false pretense, stored it and obtained negotiable warehouse receipts without signing the certificates of ownership, and negotiated the receipts to an innocent purchaser for value without notice, by virtue of this section the purchaser obtained absolute title to the cotton. But the true owner is entitled to recover its value against the bond of the warehouse manager and the warehouse if the loss was occasioned by any default in the faithful performance of their obligations under this Article, or the bond of the State warehouse superintendent if the loss was occasioned by his default in the faithful performance of his duties, or, if the loss is not covered by such bonds, then under the indemnifying or guarantee fund created by § 106-435. Ellison v. Hunsinger, 237 N.C. 619, 75 S.E.2d 884 (1953).

When Negotiation Not Impaired by Breach of Duty. — Official warehouse receipts are negotiable by written assignment and delivery, and negotiation of a receipt is not impaired by the fact that such negotiation was a breach of duty on the part of the person making the negotiation, if the person to whom the receipt was negotiated took same for value, in good faith, and without notice of the breach of duty. Harris v. Fairley, 232 N.C. 551, 61 S.E.2d 616 (1950).

Facts Held Sufficient to Show Exercise of Due Diligence. — The manager of a warehouse,

having had prior dealings with the depositor of cotton, issued negotiable receipts therefor in reliance on his belief in the integrity of such depositor and the depositor's representations and written warranties that there were no liens or valid claims outstanding against the cotton; but the manager failed to examine the records in the office of the register of deeds, which would have shown registered liens against the commodity. It was held that whether the manager exercised the care of a reasonably prudent person in issuing the negotiable receipts is susceptible to different conclusions by reasonable people, and the facts were sufficient to support the inference of fact that the manager exercised due diligence. Ahoskie Prod. Credit Ass'n v. Whedbee, 251 N.C. 24, 110 S.E.2d 795 (1959).

§ 106-443. Issuance of false receipt a felony; punishment. — The manager of any warehouse, or any agent, employee, or servant, who issues or aids in issuing a receipt for cotton or other agricultural commodity without knowing that such cotton or other agricultural commodity has actually been placed in the warehouse under the control of the manager thereof shall be guilty of a felony, and upon conviction be punished for each offense by imprisonment in the State penitentiary for a period of not less than one or more than five years, or by a fine not exceeding 10 times the market value of the cotton or other agricultural commodity thus represented as having been stored. (1919, c. 168, s. 13; 1921, c. 137, s. 13; C. S., s. 4925(m); 1941, c. 337, s. 6.)

Gist of Offense under Section. — Despite its caption, the gist of the offense created by this section is not the issuing of a false warehouse receipt; rather, it is the issuing of a receipt without knowing it to be true. State v. Woodcock, 17 N.C. App. 242, 193 S.E.2d 759 (1973).

When Warehouse Receipts Were "Issued". — Warehouse receipts were "issued" by a warehouse manager within the meaning of this section when, after they had been signed by him, they were at his direction delivered to the bank where they were no longer under his control. State v. Woodcock, 17 N.C. App. 242, 193 S.E.2d 759 (1973).

§ 106-444. Delivery of cotton without receipt or failure to cancel receipt. — Any manager, employee, agent, or servant who shall deliver cotton or other agricultural commodity from a warehouse under this Article without the production of the receipt therefor, or who fails to mark such receipt "Canceled" on the delivery of the cotton or other agricultural commodity, shall, upon conviction, be punished by a fine of not more than ten thousand dollars ($10,000), or imprisoned not more than five years, or both fine and imprisonment, in the discretion of the court. (1919, c. 168, s. 14; 1921, c. 137, s. 14; C. S., s. 4925(n); 1941, c. 337, s. 7.)

§ 106-445. Rules for issuance of duplicate receipts. — A duplicate receipt is authorized to be issued for a lost or destroyed receipt, due record of the original receipt being found upon the books of the warehouse, only upon affidavit of the owner of the original that the original receipt has been lost or destroyed, and upon the owner's giving the State warehouse superintendent bond with approved security in an amount equal to the double value of the cotton or other agricultural commodity represented by the original receipt to indemnify the State and the component warehouse facility and the State warehouse system from loss or damage and the cost of any litigation. In determining the amount of the bond required under this section, the value of cotton shall be estimated at the highest market price of middling cotton during the preceding two years. The value of other agricultural commodities shall be estimated for this purpose in accordance with regulations to be prescribed by the Board of Agriculture. (1919, c. 168, s. 15; 1921, c. 137, s. 15; C. S., s. 4925(o); 1941, c. 337, s. 8; 1965, c. 1029, s. 9.)

§ 106-446. State not liable on warehouse debts; levy on cotton or levy on grain and soybeans levied if loss is sustained. — No debt or other liability shall be created against the State by reason of the lease or operation of the warehouse system created by this Article or the storage of cotton or other agricultural commodities therein, it being the purpose of this Article to establish a self-sustaining system to operate as nearly as practicable at cost, without profit or loss to the State, except that expenses of supervision shall be paid by the Board of Agriculture. While it is believed that the provisions and safeguards mentioned in this Article, including the bonds required and supplemental indemnifying or guarantee fund mentioned in G.S. 106-435, will insure the security of the system beyond any reasonable possibility of loss, nevertheless, in order to establish the principle that this system should be supported by those for whose special financial benefit it is established, it is hereby provided that in the eventuality the system should suffer at any time any loss not fully covered by the aforementioned bonds and indemnifying fund, the State Board of Agriculture shall have the power to make such losses on cotton good by repeating for another 12 months selected by it the special levy on ginned cotton, as prescribed in G.S. 106-435 for the two years ending June 30, 1923, and the State Board of Agriculture shall have the power to make good such losses on soybeans, corn, wheat and grain sorghum by levying an assessment of one cent (1¢) per bushel on each bushel of soybeans, corn, wheat, and grain sorghum sold by producers through commercial channels for such period of time as is necessary to pay off said loss. The assessment shall be paid by the producer of the soybeans, corn, wheat and grain sorghum to the collecting handler. The collecting handler shall be any person, firm, corporation or other legal entity who purchases soybeans, corn, wheat or grain sorghum from the producer. The collecting handler shall collect the assessment at the time he first makes any payment or any credit to the producer's account for the soybeans, corn, wheat or grain sorghum. Each North Carolina Department of Agriculture no later than the tenth day of the month next following the month in which the assessment was or should have been levied. The report which shall be sent to the Department of Agriculture with the assessment shall contain the following information:

(1) Date of report;
(2) Reporting period covered by report;
(3) Name and address of collecting handler;
(4) Listing of all producers from whom the collecting handler collected the assessment, and total number of bushels of each grain for each producer on which the collecting handler collected the assessment.

Failure of the collecting handler to collect the assessment shall not relieve the collecting handler of his obligation to remit the assessment to the North Carolina Department of Agriculture. Each collecting handler required to make reports pursuant to this Article shall maintain such books and records as are required by the Commissioner of Agriculture or his authorized representative, and they shall be available for inspection for at least two years beyond the 12-month period of their applicability. The North Carolina Department of Agriculture shall have authority to make reasonable rules and regulations for the collection of this assessment and for the enforcement of this section. The funds collected pursuant to this section shall be held in the State treasury to the credit of the State warehouse system and shall be a part of the guarantee fund provided for in G.S. 106-435. (1919, c. 168, s. 16; 1921, c. 137, s. 16; C. S., s. 4925(p); 1941, c. 337, s. 9; 1965, c. 1029, s. 10; 1967, c. 560.)

§ 106-447. Insurance of cotton; premiums; lien for insurance and storage charges. — The superintendent shall insure, or shall require the local manager to insure and keep insured for its full value, upon the best terms obtainable, by individual or blanket policy, all cotton and other agricultural commodities on storage against loss by fire and lightning. In case of loss, the superintendent shall collect the insurance due and pay the same, ratably, to those lawfully

entitled to it, insurance policies to be in the name of the State and the premium collected from the owners of the cotton and other agricultural commodities, the State to have a lien on cotton and other agricultural commodities for insurance and storage charges as in the case of other public warehouses in the State. (1919, c. 168, s. 17; 1921, c. 137, s. 17; C. S., s. 4925(q); 1941, c. 337, s. 10; 1943, c. 474.)

§ 106-448. Superintendent to negotiate loans on receipts and sell cotton for owners. — The State warehouse superintendent, in addition to the duties hereinbefore vested in him, is also permitted and empowered, upon the request of the owner or owners of the warehouse receipts and cotton or other agricultural commodities stored in such warehouses to aid, assist, and cooperate, or as the duly authorized agent of such owner or owners (which authorization shall be in writing), to secure and negotiate loans upon the warehouse receipts. And upon like written request or authorization of said owner or owners, and his or their duly authorized agent, he may sell and dispose of such warehoused cotton or other agricultural commodities for such owner or owners, either in the home or foreign markets, as may be agreed upon between such owner or owners and the said superintendent, in writing. And for said loan or sales the said superintendent shall charge reasonable and just commissions, without discrimination, all of which shall be accounted for and held as part of the fund for the maintenance and operation of the State warehouse system: Provided, however, that the State incurs no liability whatever for any act or representation of the superintendent in exercising any of the permissions or powers vested in him in this section: Provided, further, that the bond of the superintendent will be liable for any unfaithful or negligent act of his by reason of which the owner or owners of such warehoused cotton or other agricultural commodities suffers damage or loss. (1919, c. 168, s. 18; 1921, c. 137, s. 18; C. S., s. 4925(r); 1941, c. 337, s. 11.)

§ 106-449. Construction of 1941 amendment. — The provisions of Chapter 337 of the Public Laws of 1941, amending this Article, shall not apply to the storage of tobacco in any form. (1941, c. 337, s. 11½.)

§ 106-450. Compliance with United States warehouse law. — (a) The State warehouse superintendent may,

(1) Upon approval of the Board of Agriculture, operate or cause to be operated by State employees or State agents under his immediate and direct supervision and control, any or all State owned or State leased warehouses, or

(2) May cause to be operated privately owned and operated, but State licensed and generally regulated and supervised warehouses, also leased by the State warehouse superintendent, and forming component units of the State warehouse system,

(3) All under and pursuant to the provisions of this Article, subject to the United States Warehouse Act and lawful regulations issued thereunder.

(b) The State warehouse superintendent is authorized, and the owners, operators, officers, and employees of affiliated State licensed component units in the State warehouse system are directed, to comply with the said United States Warehouse Act and such lawful regulations as may be issued thereunder, by the federal authorities, and such additional State rules and regulations which may be imposed, under and pursuant to this Article, upon all parties concerned in the operation of the State warehouse system. (1921, c. 137, s. 19; C. S., s. 4925(s); 1965, c. 1029, s. 11.)

§ 106-450.1. Bond of State warehouse system under United States Warehouse Act. — Any bond required by the provisions of the United States Warehouse Act on behalf of the State warehouse system shall be procured in

the name of, and shall show as the principal obligor thereon, the State of North Carolina and the obligations of such bond shall rest upon the State of North Carolina, acting through the State Board of Agriculture or the State warehouse superintendent on behalf of the State warehouse system. Any right of indemnity over as against the principal obligor for any loss under the bond by any surety, shall principally and primarily be directed against and encumber the State Warehouse Indemnifying or Guaranty Fund provided for under the terms and provisions of this Article, including, but not restricted to, G.S. 106-435. Any cause of action arising out of or incidental to any bond furnished under and pursuant to the United States Warehouse Act shall be and constitute a claim and suit against the State of North Carolina, whether the State of North Carolina is designated as party defendant in any such action or not, and whether the action is brought against the State of North Carolina, the State Board of Agriculture, the State warehouse superintendent, the State warehouse system, the Treasurer of the State of North Carolina as custodian of the State Indemnity and Guaranty Fund, or any of them, or any individual holding an office or acting as agent of the State of North Carolina, the State Board of Agriculture, the State warehouse superintendent, the State warehouse system or other legal entity acting by and for the State or any of its agencies or instrumentalities in the execution of this Article. There shall be no liability or cause of action against any individual acting as an officer, employee, agency or instrumentality of the State in the execution of this Article under any bond furnished by the State under and pursuant to the United States Warehouse Act, except as in this Article otherwise provided. (1965, c. 1038.)

§ 106-451. Numbering of cotton bales by public ginneries; public gin defined. — (a) Any person, firm or corporation operating any public cotton gin, that is, any cotton gin other than one ginning solely for the individual owner, owners, or operators thereof, shall hereafter be required to distinctly and clearly number, serially, each and every bale of cotton ginned, in one of the following ways:

(1) Attach a metal strip carrying the serial number to one of the ties of the bale and ahead of the tie lock, and so secure it that ordinary handling will not remove or disfigure the number;

(2) Impress the serial number upon one of the bands or ties around the bale.

Any person, firm or corporation failing or refusing to comply with this section shall be guilty of a misdemeanor for each and every offense, and upon conviction shall be fined not exceeding fifty dollars ($50.00) or imprisoned not more than 30 days.

(b) Any person, firm or corporation buying a bale of cotton on which this number has: (i) been removed; (ii) defaced by cutting; (iii) or otherwise altered, unless a new metal strip is attached and impression made by the original gin ginning said bale or bales of cotton, shall be guilty of a misdemeanor for each and every offense and upon conviction shall be fined not exceeding fifty dollars ($50.00) or imprisoned not more than 30 days.

(c) Every public ginnery, as defined in subsection (a) of this section, shall keep a book in which shall be registered all cotton received at the gin to be ginned in the name of the owner of the cotton and the name of the person from whom the cotton is received for ginning. Any person giving false information for entry in this book shall be guilty of a misdemeanor. There shall be furnished by the ginner for each bale of cotton ginned, to the owner thereof, a gin ticket bearing the name of the gin, the serial number of the bale prescribed by subsection (a) of this section, the weight of the bale and the name of the owner of the cotton. Such gin ticket shall be presented, for comparison with the serial number prescribed in subsection (a) of this section, at the time such bale is sold or offered for sale, as prima facie evidence of ownership thereof. (1923, c. 167; 1949, c. 824.)

§ 106-451.1. Purchasers of cotton to keep records of purchases. — Every cotton broker or other person buying cotton from the producer after it is ginned shall keep a record of such purchase for a period of one year from date of purchase. This record shall contain the name and address of the seller of the cotton, the date on which purchased, the weight or amount and the serial number of the bales provided for by G.S. 106-451. Any person violating the provisions of this section shall be guilty of a misdemeanor and shall, upon conviction, be fined or imprisoned in the discretion of the court: Provided, any person, firm or corporation who purchases cotton which has been ginned outside this State shall be required to keep only so much of the records hereinabove specified as purchasers are required to keep by the law of the state where said cotton was ginned. (1945, c. 61; 1947, c. 977.)

ARTICLE 39.

Leaf Tobacco Warehouses.

§ 106-452. Maximum warehouse charges. — The charges and expenses of handling and selling leaf tobacco upon the floor of tobacco warehouses shall not exceed the following schedule of prices, viz: for auction fees, fifteen cents (15¢) on all piles of 100 pounds or less, and twenty-five cents (25¢) on all piles over 100 pounds; for weighing and handling, ten cents (10¢) per pile for all piles less than 100 pounds, for all piles over 100 pounds at the rate of ten cents (10¢) per hundred pounds; for commissions on the gross sales of leaf tobacco in said warehouses, not to exceed two and one-half per centum (2½%): Provided that tobacco warehouses selling burley tobacco only may charge commissions on the gross sales of burley leaf tobacco not to exceed three and one-half per centum (3½%). There may also be a basket fee of twenty-five cents (25¢) per basket on all burley leaf tobacco sold in such warehouses. (1895, c. 81; Rev., s. 3042; C. S., s. 5124; 1941, c. 291; 1955, c. 1029.)

Warehouse System Authorized as Aid in Marketing of Leaf Tobacco. — See Champion Shoe Mach. Co. v. Sellers, 197 N.C. 30, 147 S.E. 674 (1929).

Cited in Townsend v. Yeomans, 301 U.S. 441, 57 Sup. Ct. 842, 81 L. Ed. 1265 (1937); Davies Warehouse Co. v. Bowles, 321 U.S. 144, 64 Sup. Ct. 474, 88 L. Ed. 635 (1944).

§ 106-453. Oath of tobacco weigher; duty of weigher to furnish list of number and weight of baskets weighed. — All leaf tobacco sold upon the floor of any tobacco warehouse shall first be weighed by some reliable person 18 years of age or older, who shall have first sworn and subscribed to the following oath, to wit: "I do solemnly swear (or affirm) that I will correctly and accurately weigh all tobacco offered for sale at the warehouse of . . . . . ., and correctly test and keep accurate the scales upon which the tobacco so offered for sale is weighed." Such oath shall be filed in the office of the clerk of the superior court of the county in which said warehouse is situated.

Immediately upon the weighing of any lot or lots of tobacco, the tobacco weigher shall furnish, upon request, to the person delivering such tobacco to the scale for weighing a true list showing the number of baskets of tobacco weighed and the individual weight of each such basket so presented. (1895, c. 81, s. 2; Rev., s. 3043; C. S., s. 5125; 1951, c. 1105, s. 1; 1971, c. 1085, s. 2.)

Cross Reference. — As to provisions requiring accounts of sales and reports to Commissioner, see § 106-456 et seq.

§ 106-454. Warehouse proprietor, etc., to render bill of charges; penalty. — The owner, operator, or person in charge of each warehouse shall render to each seller of tobacco at the warehouse a bill plainly stating the amount charged for weighing and handling, the amount charged for auction fees, and the commission charged on such sale, and it shall be unlawful for any other charge or fees to be made or accepted. Any person, firm, corporation, or any employee thereof, violating the provisions of this section shall be guilty of a misdemeanor and fined not less than one hundred dollars ($100.00) nor more than two hundred and fifty dollars ($250.00) and/or imprisoned not to exceed 30 days for the first offense, and for the second or additional offenses fined not less than five hundred dollars ($500.00) nor more than one thousand dollars ($1,000) or imprisoned for not less than 30 days or more than six months, or both fined and imprisoned, in the discretion of the court. (1895, c. 81, ss. 3, 4; Rev., s. 3044; C. S., s. 5126; 1973, c. 1305.)

Editor's Note. — The 1973 amendment substituted "owner, operator, or person in charge" for "proprietor" and made other minor changes in wording in the first sentence and rewrote the second sentence.

§ 106-455. Tobacco purchases to be paid for by cash or check to order. — The proprietor of each and every warehouse shall pay for all tobacco sold in said warehouse either in cash or by giving to the seller a check payable to his order in his full name or in his surname and initials and it shall be unlawful to use any other method. Every person, firm or corporation violating the provisions hereof shall, in addition to any and all civil liability which may arise by law, be guilty of a misdemeanor and, upon conviction thereof, shall be punishable by fine not exceeding one hundred dollars ($100.00) or imprisonment not exceeding 30 days, or both, in the discretion of the court. (1931, c. 101, s. 1; 1939, c. 348.)

Editor's Note. — For discussion of this section prior to the 1939 amendment, see 9 N.C.L. Rev. 387.

ARTICLE 40.

Leaf Tobacco Sales.

§ 106-456. Accounts of warehouse sales required. — On and after the first day of August, 1907, the proprietor of each and every leaf tobacco warehouse doing business in this State shall keep a correct account of the number of pounds of leaf tobacco sold upon the floor of his warehouse daily. (1907, c. 97, s. 1; C. S., s. 4926.)

Cross Reference. — As to effective period of lien upon leaf tobacco sold in auction warehouse, see § 44-69.

§ 106-457. Monthly reports to Commissioner; results classified. — On or before the tenth day of each succeeding month the said warehouse proprietors shall make a statement, under oath, of all the tobacco so sold upon the floor of his warehouse during the past month and shall transmit the said statement, at once, to the Commissioner of Agriculture at Raleigh, North Carolina. The report so made to the Commissioner of Agriculture shall be so arranged and classified as to show the number of pounds of tobacco sold for the producers of tobacco from first hand; the number of pounds sold for dealers; and the number of pounds resold by the proprietor of the warehouse for his own account or for the

account of some other warehouse. (1907, c. 97, s. 2; C. S., s. 4927; Ex. Sess. 1921, c. 76.)

§ 106-458. Commissioner to keep record and publish in Bulletin. — The Commissioner of Agriculture shall cause said statements to be accurately copied into a book to be kept for this purpose, and shall keep separate and apart the statements returned to him from each leaf tobacco market in the State, so as to show the number of pounds of tobacco sold by each market for the sale of leaf tobacco; the number of pounds sold by producers, and the number of pounds resold upon each market. The Commissioner of Agriculture shall keep said books open to the inspection of the public, and shall, on or before the fifteenth day of each month, after the receipt of the reports above required to be made to him on or before the tenth day of each month, cause the said reports to be published in the Bulletin issued by the agricultural department and in one or more journals published in the interest of the growth, sale, and manufacture of tobacco in the State, or having a large circulation therein. (1907, c. 97, s. 3; C. S., s. 4928; Ex. Sess. 1921, c. 76.)

§ 106-459. Penalty for failure to report sales. — Any warehouse failing to make the report as required by G.S. 106-457 shall be subject to a penalty of twenty-five dollars ($25.00) and the costs in the case, to be recovered by any person suing for same. (1915, c. 31, s. 1; C. S., s. 4929; 1973, c. 108, s. 56.)

Editor's Note. — The 1973 amendment rewrote this section.

§ 106-460. Commissioner to publish names of warehouses failing to report sales; certificate as evidence. — The Commissioner shall, on the fourteenth day of each month, publish in some newspaper the names of the tobacco warehouses that have failed to comply with this Article.

The certificate of the Commissioner under seal of the Department shall be admissible as evidence the same as if it were deposition taken in form as provided by law. (1915, c. 31, ss. 2, 3; C. S., s. 4930; Ex. Sess. 1921, c. 76.)

§ 106-461. Nested, shingled or overhung tobacco. — It shall be unlawful for any person, firm or corporation to sell or offer to sale, upon any leaf tobacco warehouse floor, any pile or piles of tobacco, which are nested, or shingled, or overhung, or either as hereinafter defined:

(1) Nesting tobacco: That is, so arranging tobacco in the pile offered for sale that it is impossible for the buyer thereof to pull leaves from the bottom of such pile for the purpose of inspection;

(2) Shingling tobacco: That is, so arranging a pile of tobacco that a better quality of tobacco appears upon the outside and tobacco of inferior quality appears on the inside of such pile; and

(3) Overhanging tobacco: This is, so arranging a pile of tobacco that there are alternate bundles of good and sorry tobacco. (1933, c. 467, s. 1.)

§ 106-462. Sale under name other than that of true owner prohibited. — It shall be unlawful for any person, firm or corporation to sell or offer for sale or cause to be sold, or offered for sale, any leaf tobacco upon the floors of any leaf tobacco warehouse, in the name of any person, firm or corporation, other than that of the true owner or owners thereof, which true owner's name shall be registered upon the warehouse sales book in which it is being offered for sale. (1933, c. 467, s. 2.)

§ 106-463. Allowance for weight of baskets and trucks. — It shall be unlawful for any person, firm or corporation in weighing tobacco for sale to permit or allow the basket and truck upon which such tobacco is placed for the

purpose of obtaining such weight to vary more than two pounds from the standard or uniform weight of such basket and truck. (1933, c. 467, s. 3.)

§ 106-464. Violation made misdemeanor. — Any person, firm or corporation violating the provisions of G.S. 106-461 to 106-463 shall be guilty of a misdemeanor, and upon conviction shall be fined not more than fifty dollars ($50.00) or imprisoned not more than 30 days. (1933, c. 467, s. 4.)

§ 106-465. Organization and membership of tobacco boards of trade; rules and regulations; fire insurance and extended coverage required; price fixing prohibited. — Tobacco warehousemen and the purchasers of leaf tobacco, at auction, on warehouse floors, are hereby authorized to organize, either as nonstock corporations, or voluntary associations, tobacco boards of trade in the several towns and cities in North Carolina in which leaf tobacco is sold on warehouse floors, at auction.

Such tobacco boards of trade as may now exist, or which may hereafter be organized, are authorized to make reasonable rules and regulations for the economical and efficient handling of the sale of leaf tobacco at auction on the warehouse floors in the several towns and cities in North Carolina in which an auction market is situated.

Each tobacco board of trade organized pursuant to this section shall, on or before June 1, 1973, by regulation, require that all auction warehouse firms which are members of, or may hereafter request membership in, such board of trade for the purpose of displaying for sale and selling leaf tobacco, deposit with the board of trade prior to the market opening, a copy of a policy of fire insurance and extended coverage in a company licensed to do business in North Carolina to fully insure, as determined by the board of trade, the market value of the maximum volume of tobacco that will be weighed and left displayed for sale on said warehouse floor at any time during the marketing season. Warehouses using mechanized conveyor-line auction sales where tobacco is not displayed for sale on sales floor would be excluded from the requirement of this regulation.

In determining the market value and maximum volume of tobacco that will be weighed and placed on said warehouse floor at any one time, the board of trade shall use as criteria the prior season's official gross average price for that belt, as recorded by the North Carolina Department of Agriculture and the maximum limit of daily sales, as recommended by the currently functioning flue-cured and burley tobacco marketing organizations, applied to each warehouse based on the firm's pro rata share of the market's maximum limit daily sales opportunity, multiplied times the number of days of sales that said warehouse plans to place on sales floor at any one time, including any and all tobacco weighed and deposited with the warehouse as bailee for future sale. The data relating to the official average price and the maximum limits of daily sales shall be assembled and supplied by the North Carolina Commissioner of Agriculture or his representative to the board of trade in each tobacco market in North Carolina, at least 30 days prior to the opening of markets in each belt.

It shall be unlawful for any person, firm, or corporation to operate an auction sale in said market until said policy is so deposited with and approved by the board of trade. The board of trade shall enjoin the sale of tobacco by any warehouse firm that fails to so deposit a policy of fire insurance and extended coverage with the board.

The tobacco boards of trade in the several towns and cities in North Carolina are authorized to require as a condition to membership therein the applicants to pay a reasonable membership fee and the following schedule of maximum fees shall be deemed reasonable, to wit:

A membership fee of fifty dollars ($50.00) in those towns in which less than 3,000,000 pounds of tobacco was sold at auction between the dates of August 20, 1931, and May 1, 1932; a fee of one hundred dollars ($100.00) in those towns

in which during said period of time more than 3,000,000 and less than 10,000,000 pounds of tobacco was sold; a fee of one hundred fifty dollars ($150.00) in those towns in which during said period of time more than 10,000,000 and less than 25,000,000 pounds of tobacco was sold; a fee of three hundred dollars ($300.00) in those towns in which during said period of time more than 25,000,000 pounds of tobacco was sold.

Membership, in good standing, in a local board of trade shall be deemed a reasonable requirement by such board of trade as a condition to participating in the business of operating a tobacco warehouse or the purchase of tobacco at auction therein.

Membership in the several boards of trade may be divided into two categories:

(1) Warehousemen;

(2) Purchasers of leaf tobacco other than warehousemen.

Purchasers of leaf tobacco may be: (i) participating or (ii) nonparticipating. The holder of a membership as a purchaser of leaf tobacco shall have the option of becoming, upon written notice to the board of trade, either a participating or a nonparticipating member. Individuals, partnerships, and/or corporations who are members of tobacco boards of trade, established under this section or coming within the provisions of this section, as nonparticipating members shall not participate in or have any voice or vote in the management, conduct, activities, allotment of sales time, and/or hours, the fixing of dates for the opening or closing of tobacco auction markets, or in any other manner or respect. Individuals, partnerships, and/or corporations who are such nonparticipating members in any of the several tobacco boards of trade shall not be responsible or liable for any of the acts, omissions or commissions of the several tobacco boards of trade.

It shall be unlawful and punishable as of a misdemeanor for any bidder or purchaser of tobacco upon warehouse floors to refuse to take and pay for any basket or baskets so bid off from the seller when the seller has or has not accepted the price offered by the purchaser or bidder of other baskets. Any person suspended or expelled from a tobacco board of trade under the provisions of this section may appeal from such suspension to the superior court of the county in which said board of trade is located.

Nothing in this section shall authorize the organization of any association having for its purpose the control of prices or the making of rules and regulations in restraint of trade. (1933, c. 268; 1951, c. 383; 1973, c. 96.)

Editor's Note. — The 1973 amendment added the third, fourth and fifth paragraphs.

Interests of Warehousemen, Buyers and Sellers of Tobacco. — The warehousemen have an economic stake in the markets' operations, but the markets exist for the purpose of serving the interests of buyers and sellers of tobacco. Those interests deserve inquiry and consideration in an appraisal of any plan containing market restrictions and limitations. Robertson v. Federal Trade Comm'n, 415 F.2d 49 (4th Cir. 1969).

The very nature of leaf tobacco demands regulation of its sale, as this section recognizes and the decisions of the courts confirm. Eagles v. Harriss Sales Corp., 368 F.2d 927 (4th Cir. 1966).

Jurisdiction of Federal Trade Commission. — There is a substantial public interest in maintaining free and open competition among warehousemen on tobacco auction markets. The public interest often is specific and substantial, because the unfair method employed threatens the existence of present or potential competition. That is the basis for the jurisdiction of the Federal Trade Commission in a case involving regulations adopted pursuant to this section governing the allocation of selling time to tobacco warehouses. Asheville Tobacco Bd. of Trade, Inc. v. Federal Trade Comm'n, 263 F.2d 502 (4th Cir. 1959).

The decisions of the North Carolina courts since the enactment of this section make it clear that the sale of tobacco at auction is of great public importance to the State of North Carolina, but they also show that the operation of the business is in the hands of private parties. A tobacco board of trade is organized primarily for the benefit of those engaged in the business; its articles of association and bylaws constitute a contract amongst the members by which each member consents to reasonable regulations per-

taining to the conduct of the business. Such a board is not an instrumentality of the State, and its activities are subject to the jurisdiction of the Federal Trade Commission. Asheville Tobacco Bd. of Trade, Inc. v. Federal Trade Comm'n, 263 F.2d 502 (4th Cir. 1959).

Unfair Trade Regulations Are Subject to Correction by Federal Trade Commission, Not Courts. — The Federal Trade Commission rather than the courts has the expertise, the power, and the implements to explore and correct unfair trade regulations. Eagles v. Harriss Sales Corp., 368 F.2d 927 (4th Cir. 1966).

Members Have Technical Representation through Board. — Under this section, tobacco purchasers are, or may be, members of a board of trade. To the extent that they are, they have had technical representation through the board of trade. Roberts v. Fuquay-Varina Tobacco Bd. of Trade, 405 F.2d 283 (4th Cir. 1968).

By becoming a member of a board a person consents to be bound by its reasonable regulations. Eagles v. Harriss Sales Corp., 368 F.2d 927 (4th Cir. 1966).

Rules and Regulations of Board. — The authority granted to a tobacco board of trade, under and by virtue of the provisions of this section, to make reasonable rules and regulations for the economical and efficient handling of the sale of leaf tobacco at auction on warehouse floors where an auction market is situated, is sufficiently broad to include the authority to make reasonable rules and regulations in respect to allotment of sales time. Cooperative Warehouse v. Lumberton Tobacco Bd. of Trade, 242 N.C. 123, 87 S.E.2d 25 (1955); Day v. Asheville Tobacco Bd. of Trade, 242 N.C. 136, 87 S.E.2d 18 (1955).

The articles of association for the purposes expressed in the charter and bylaws of a tobacco board of trade, organized and existing under and by virtue of this section, constitute a contract between it and its members, and as a consequence of membership in the corporation for mutual membership, each member is deemed to have consented to all reasonable rules and regulations pertaining to the business. Cooperation Warehouse v. Lumberton Tobacco Bd. of Trade, 242 N.C. 123, 87 S.E.2d 25 (1955); Day v. Asheville Tobacco Bd. of Trade, 242 N.C. 136, 87 S.E.2d 18 (1955).

Regulations adopted by a local tobacco board of trade involving allocation of selling time to warehouses were held in the instant case to unreasonably and unduly restrain trade in the purchase and sale of tobacco and to constitute unfair methods of competition and unfair acts or practices in commerce within the meaning of the Federal Trade Commission Act. Asheville Tobacco Bd. of Trade, Inc. v. Federal Trade Comm'n, 263 F.2d 502 (4th Cir. 1959).

A tobacco board of trade has no authority to legislate. It cannot create a duty where the law creates none. The legislature has the authority to regulate, within constitutional limits, the sale of leaf tobacco upon the auction markets of this State, and in doing so may prescribe standards of conduct to be observed by those who conduct auction warehouses as well as others participating in the sales. But this is a nondelegable power. Kinston Tobacco Bd. of Trade v. Liggett & Myers Tobacco Co., 235 N.C. 737, 71 S.E.2d 21 (1952).

Board Has No Right to Establish Sales and Require Buyers to Purchase Thereat. — This section is silent upon the question of the number of sales and prescribes no standard by which the number of sales may be determined. Therefore, in the absence of an agreement, either expressed or implied, a board organized under this section has no right to establish sales and require buyers to purchase thereat. Kinston Tobacco Bd. of Trade v. Liggett & Myers Tobacco Co., 235 N.C. 737, 71 S.E.2d 21 (1952).

Regulation adjusting divisions of selling time to establish an equitable market participation did not constitute conspiracy, monopoly, or an unreasonable restraint of trade. Eagles v. Harriss Sales Corp., 368 F.2d 927 (4th Cir. 1966).

Applied in Roberts v. Fuquay-Varina Tobacco Bd. of Trade, Inc., 220 F. Supp. 608 (E.D.N.C. 1963), aff'd, 332 F.2d 521 (4th Cir. 1964).

ARTICLE 41.

Dealers in Scrap Tobacco.

§ 106-466. Application for license; amount of tax; exceptions. — Every person, firm or corporation desiring to engage in the business of buying and/or selling scrap or untied tobacco in the State of North Carolina shall first procure from the Secretary of Revenue of North Carolina a license so to do, and for that purpose shall file with the said Secretary of Revenue an application setting forth the name of the county or counties in which such applicant proposes to engage in the said business and the place or places where his, their or its principal office (if any) shall be situated; and shall pay to the said Secretary of Revenue of North Carolina, to be placed in the general fund for the use of the State, an annual license tax of five hundred dollars ($500.00) for each and every county in North

Carolina in which the applicant proposes to engage in such business. Every such license issued hereunder shall run from the date thereof and shall expire on the thirty-first day of May of the next year following its issue. No license shall be issued for less than the full amount of tax prescribed. Any lot of parts of leaves of tobacco, or any lot in which parts of leaves of tobacco are commingled with whole leaves of tobacco, or any other leaf or leaves of tobacco, or parts of leaves of tobacco not permitted, under the rules and regulations of tobacco warehouses, to be offered for sale at auction on tobacco warehouse floors, shall be deemed to be "scrap or untied" tobacco within the meaning and purview of this Article: Provided, that the tax herein levied shall not apply in cases where the producer delivers his scrap or untied tobacco to a tobacco warehouse or tobacco redrying plant. (1935, c. 360, s. 1; 1937, c. 414, s. 1; 1939, c. 389, s. 1; 1941, c. 246; 1973, c. 476, s. 193.)

Editor's Note. — The 1973 amendment substituted "Secretary of Revenue" for "Commissioner of Revenue" in the first sentence.

Validity. — This Article, imposing a license tax on dealers in scrap tobacco, is not vague or uncertain, and is uniform and equal in its application. Ficklen Tobacco Co. v. Maxwell, 214 N.C. 367, 199 S.E. 404 (1938), holding that the former tax of $1,000 was not excessive as a matter of law.

§ 106-467. Report to Commissioner of Agriculture each month. — On or before the tenth day of each month every person, firm or corporation engaged in the business set forth in G.S. 106-466 shall make a report to the Commissioner of Agriculture of North Carolina, setting forth the number of pounds of scrap or untied tobacco purchased and the price paid therefor during the preceding month in each of the counties in which the said person, firm or corporation is doing business and also the purposes for which such scrap tobacco is bought or sold. (1935, c. 360, s. 2; 1937, c. 414, s. 2.)

§ 106-468. Display of license; no fixed place of business; agents, etc.; licensing of processors, redriers, etc. — (a) If any person, firm or corporation licensed to engage in the business aforesaid has a warehouse, office or fixed place of business, the license issued by the Secretary of Revenue as herein provided shall be displayed in a conspicuous place in said warehouse, office or place of business. Such license so obtained shall not be transferable and shall authorize such person, firm or corporation to engage in the business described in this Article only on the premises described in the license. Only one original license shall be issued to any person, firm or corporation, which will authorize such person, firm or corporation to engage in such business in the county for which such license is issued. If such person, firm or corporation shall have no warehouse, office, or fixed place of business in the county where such business is carried on, if the original license is to be issued to a firm, partnership or copartnership, there shall be designated on such license the name of the individual who is to exercise the privilege granted on behalf of such firm, partnership or copartnership. If such license is to be issued to a corporation, there shall be designated on such license the name of the individual who is to exercise the privilege granted on behalf of such corporation and the license so issued will authorize only the individual designated thereon to engage in such business for or on behalf of such person, firm, partnership, copartnership or corporation, and none other. If such person, firm or corporation carries on the business herein described through agents, representatives, district attorneys, or peddlers other than those named on the original license issued, as herein provided, additional and like licenses, for which there shall be paid the sum of two hundred fifty dollars ($250.00) shall be obtained for such additional agents, representatives, district attorneys, or peddlers for each county in which such business is carried on, in the manner hereinafter set out, and all original and additional licenses issued to persons, firms or corporations which have no

warehouse, office or fixed place of business shall be carried on the person of such licensee and shall be exhibited when requested or demanded by any law-enforcement officer of North Carolina, or any person from whom such tobacco is bought, or to whom the same may be sold.

Any person, firm or corporation applying for and obtaining a license under this Article may employ traveling representatives, agents, peddlers, or district attorneys for the purpose of buying and/or selling scrap tobacco, but such traveling representatives, agents or peddlers shall apply for and obtain from the Secretary of Revenue a separate additional license on behalf of such person, firm or corporation whom or which he represents and shall pay for such license a tax of two hundred fifty dollars ($250.00) for each additional license so issued. Every such additional license issued hereunder shall run from the date thereof and shall expire on the thirty-first day of May of the next year following its issue. No license shall be issued for less than the full amount of tax prescribed. Such traveling representative, agent or peddler engaged in such business shall carry on his person the license so obtained, which shall be exhibited when requested or demanded by any law-enforcement officer of North Carolina or any person from whom such tobacco is bought or to whom the same may be sold.

(b) Any such person, firm or corporation described in subsection (a) of this section, who is engaged in the business of buying and/or selling scrap tobacco within the meaning of this Article, and who maintains and operates in connection therewith a plant or factory where such scrap tobacco is processed, manufactured, or redried, shall apply for and obtain from the Secretary of Revenue a license to engage in such business and for that purpose shall file with the Secretary of Revenue an application setting forth the name of the county or counties in which such applicant proposes to engage in such business, and the place or places where his, their, or its principal office is situated, and shall pay for such license a tax of five hundred dollars ($500.00) for each county in this State in which the applicant proposes to engage in such business. The license so issued shall authorize the person, firm or corporation to whom it is issued to engage in such business only on the premises designated in the license. Persons, firms or corporations taxed under this subsection shall not be required to pay the license tax provided for in subsection (a) of this section. Every such license issued hereunder shall run from the date thereof and shall expire on the thirty-first day of May of the next year following its issue and no license shall be issued for less than the full amount of the tax prescribed. (1935, c. 360, s. 3; 1937, c. 414, s. 3; 1939, c. 389, s. 2; 1973, c. 47, s. 2; c. 476, s. 193.)

Editor's Note. — The first 1973 amendment substituted "district attorneys" for "solicitors" throughout the section.

The second 1973 amendment substituted "Secretary of Revenue" for "Commissioner of Revenue" in the first and second paragraphs of subsection (a) and in subsection (b).

§ 106-469. Violation made misdemeanor. — Any person, firm or corporation violating any of the provisions of this Article shall be guilty of a misdemeanor, and upon conviction shall be fined and/or imprisoned in the discretion of the court. (1937, c. 414, s. 4.)

§ 106-470. Exemptions. — Nothing in this Article shall have any effect upon or apply to any stocks of leaf and scrap tobacco grown prior to the year 1937, or to purchases or sales of scrap or untied tobacco which has been processed, redried or manufactured. (1937, c. 414, s. $4^1/_2$; 1939, c. 389, s. 3.)

ARTICLE 42.

Production, Sale, Marketing and Distribution of Tobacco.

§§ 106-471 to 106-489: Repealed by Session Laws 1955, c. 188, s. 1.

Editor's Note. — This Article, known as the Tobacco Compact Act, depended upon similar action in other tobacco-producing states, which failed to materialize, and consequently was of no avail. 15 N.C.L. Rev. 323.

ARTICLE 43.

Combines and Power Threshers.

§§ 106-490 to 106-495: Repealed by Session Laws 1955, c. 268, s. 2.

§ 106-495.1. Reports of crops harvested by means of combines or power threshers. — It shall be the duty of the Commissioner of Agriculture to collect reports from every person, firm, or corporation who shall engage in the harvesting of crops by means of combines or power threshers; and it shall be the duty of every person, firm, or corporation engaging in the harvesting of crops by means of combines or power threshers to keep an accurate and complete record of the acreages harvested, and amounts threshed or combined for each farm, and to make reports on forms to be provided by the Commissioner of Agriculture showing acreages and amounts for the preceding season. For crops combined or threshed between January 1 and July 31 of each year the report shall be made not later than the first day of September of such year. For crops combined or threshed between August 1 and December 31 of each year the report shall be made not later than the first day of February of the next succeeding year. (1955, c. 268, s. 1.)

§ 106-495.2. Reports of sales of combines or power threshers. — It shall be the duty of every person, firm, or corporation who shall sell any combine or power thresher in this State to report to the Commissioner of Agriculture the name and address of the purchaser thereof. Every sale completed on or after the first day of September and prior to the first day of May of the following year shall be reported on or before the first day of June of that year, and every sale completed on or after the first day of May and prior to the first day of September of each year shall be reported on or before the first day of October of said year. (1955, c. 268, s. 1.)

ARTICLE 44.

Unfair Practices by Handlers of Fruits and Vegetables.

§ 106-496. Protection against unfair trade practices. — The Board of Agriculture is hereby authorized to make such rules and regulations as it deems necessary to protect producers of fruits and vegetables from loss caused by financial irresponsibility and unfair, harmful or unethical trade practices of handlers who incur financial liability for the purchase or production of fruits and vegetables. A "handler," as used herein, is a person, firm, corporation or other legal entity or his agent or employee who enters into a written contract for the purchase from or production by a producer of fruits and vegetables. (1941, c. 359, s. 1; 1971, c. 1064, s. 1.)

Commissioner Is Not Individually Liable. — The Commissioner of Agriculture could not be held individually liable to producers of soybeans for failure to require a soybean dealer to obtain a permit to operate as a grain dealer and to furnish bond as set forth in § 106-496 et seq., since

the sections did not place a mandatory duty on the Commissioner to require permits or bonds, and there was no liability provision in the statute. Etheridge v. Graham, 14 N.C. App. 551, 188 S.E.2d 551 (1972), decided prior to 1971 amendments to this Article.

§ 106-497. Permits required. — A handler of fruits and vegetables shall not enter into a written contract with a producer until he obtains a written permit from the Commissioner of Agriculture. The Board of Agriculture may prescribe by regulation the form of the application for a permit, the information to be furnished to the Commissioner by the applicant for a permit and the date for filing the application. A permit shall not be issued until the applicant files on or before the date set by the Board a written request with the Commissioner and files with the request two copies of the applicant's proposed contract. A penalty of twenty-five dollars ($25.00) shall be paid by the applicant if the application is filed after the date established by the Board and no permit shall be issued until such penalty is paid. Any penalties collected by the Commissioner shall be used to help defray the costs of administering Article 44 of Chapter 106.

This Article shall not apply to transactions by a handler with a producer on a cash basis. "Cash" as used herein shall include bank bills, checks drawn on banks and bank notes. (1941, c. 359, s. 2; 1971, c. 1064, s. 2.)

§ 106-498. Bond required. — No permit shall be issued to a handler until such handler has furnished the Commissioner of Agriculture a bond satisfactory to the Commissioner in an amount of not less than ten thousand dollars ($10,000). The Commissioner may require a new bond or he may require the amount of any bond to be increased if he finds it necessary for the protection of the producer. Such bond shall be payable to the State and shall be conditioned upon the fulfilling of all financial obligations incurred by the handler with all producers with whom the handler contracts. Any producer alleging any injury by the fraud, deceit, willful injury or failure to comply with the terms of any written contract by a handler may bring suit on the bond against the principal and his surety in any court of competent jurisdiction and may recover the damages found to be caused by such acts complained of. (1941, c. 359, s. 3; 1967, c. 154; 1971, c. 1064, s. 3.)

§ 106-499. Contracts between handlers and producers; approval of Commissioner. — All contracts filed with the Commissioner by an applicant shall be approved by the Commissioner before a permit is issued. The Commissioner may withhold his approval in his discretion if he is of the opinion that the contract is illegal or unfair to the producer, or that the contractor is insolvent or financially irresponsible, or if for any other cause it reasonably appears to him that the contract in question might defeat the purpose of this Article. (1941, c. 359, s. 4; 1971, c. 1064, s. 4.)

§ 106-500. Additional powers of Commissioner to enforce Article. — In order to enforce this Article, the Commissioner of Agriculture, upon his own motion or upon the verified complaint of any producer, shall have the following additional powers:

(1) To inspect or investigate transactions for the sale or delivery of fruits and vegetables to persons acting as handlers; to require verified reports and accounts of all authorized handlers; to examine books, accounts, memoranda, equipment, warehouses, storage, transportation and other facilities, fruits and vegetables and other articles connected with the business of the handlers; to inquire into failure or refusal of any handlers to accept produce under his contracts and to pay for it as agreed;

(2) To hold hearings after due notice to interested parties and opportunity to all to be heard; to administer oaths, take testimony and issue

subpoenas; to require witnesses to bring with them relevant books, papers, and other evidence; to compel testimony; to make written findings of fact and on the basis of these findings to issue orders in controversies before him, and to revoke the permits of persons disobeying the terms of this Article or of rules, regulations, and orders made by the Board or the Commissioner. Any party disobeying any order or subpoena of the Commissioner shall be guilty of contempt, and shall be certified to the superior court for punishment. Any party may appeal to the superior court from any final order of the Commissioner;

(3) To issue all such rules and regulations, with the approval of the Board, and to appoint necessary agents and to do all other lawful things necessary to carry out the purposes of this Article.

(4) This Article will not apply to peanuts and corn grown under contract for seed purposes. (1941, c. 359, s. 5; 1971, c. 1064, ss. 5, 6.)

§ 106-501. Violation of Article or rules made misdemeanor. — Any person who violates the provisions of this Article or the rules and regulations promulgated thereunder shall be guilty of a misdemeanor, and shall be punishable by a fine of not more than five hundred dollars ($500.00) or by imprisonment for not more than one year, or both. (1941, c. 359, s. 6.)

ARTICLE 45.

Agricultural Societies and Fairs.

Part 1. State Fair.

§ 106-502. Land set apart. — For the purpose of the operating of a State fair, expositions and other projects which properly represent the agricultural, manufacturing, industrial and other interests of the State of North Carolina, there is hereby dedicated and set apart 200 acres of land owned by the State or any department thereof within five miles of the State Capitol, the particular acreage to be selected, set apart, and approved by the Governor and Council of the State of North Carolina. (1927, c. 209, s. 1; 1959, c. 1186, s. 1.)

§ 106-503. Board of Agriculture to operate fair. — The State fair and other projects provided for in G.S. 106-502, shall be managed, operated and conducted by the Board of Agriculture established in G.S. 106-502. To that end, said Board of Agriculture shall, at its first meeting after the ratification of this section, take over said State fair, together with all the lands, buildings, machinery, etc., located thereon, now belonging to said State fair and shall operate said State fair and other projects with all the authority and power conferred upon the former board of directors, and it shall make such rules and regulations as it may deem necessary for the holding and conducting of said fair and other projects, and/or lease said fair properties so as to provide a State fair. (1931, c. 360, s. 3; 1959, c. 1186, s. 2.)

§ 106-503.1. Board authorized to construct and finance facilities and improvements for fair. — (a) Borrowing Money and Issuing Bonds. — For the purpose of building, enlarging and improving the facilities on the properties of the State fair, the State Board of Agriculture is hereby empowered and authorized to borrow a sum of money not to exceed one hundred thousand dollars ($100,000), and to issue revenue bonds therefor, payable in series at such time or times and bearing such rate of interest as may be fixed by the Governor and Council of State: Provided, that no part of the payments of the principal or interest charges on said loan shall be made out of the general revenue of the State of North Carolina, and the credit of the State of North Carolina and the State Department of Agriculture or the agricultural fund, other than the

revenue of the State fair funds, shall not be pledged either directly or indirectly for the payment of said principal or interest charges. The receipts, funds, and any other State fair assets may be pledged as security for the payment of any bonds that may be issued.

(b) Contracts and Leases; Pledge of Gate Receipts, etc. — For the further purpose of acquiring, constructing, operating and financing said properties and facilities on the North Carolina State fairgrounds, the Board of Agriculture may enter into such agreements, contracts and leases as may be necessary for the purpose of this section, and may pledge, appropriate, and pay such sums out of the gate receipts or other revenues coming to the State Board of Agriculture from the operation of any facilities of the State fair as may be required to secure, repay, or meet the principal and interest charges on the loan herein authorized.

(c) Gifts and Endowments. — The State Board of Agriculture may receive gifts and endowments, whether real estate, moneys, goods or chattels, given or bestowed upon or conveyed to them for the benefit of the State fair, and the same shall be administered in accordance with the requirements of the donors. (1945, c. 1009; 1959, c. 1186, s. 3.)

§ 106-504. Lands dedicated by State may be repossessed at will of General Assembly. — Any lands which may be dedicated and set apart under the provisions of this Article may be taken possession of and repossessed by the State of North Carolina, at the will of the General Assembly. (1927, c. 209, s. 4(a).)

Part 2. County Societies.

§ 106-505. Incorporation; powers and term of existence. — Any number of resident persons, not less than 10, may associate together in any county, under written articles of association, subscribed by the members thereof, and specifying the object of the association to encourage and promote agriculture, domestic manufactures, and the mechanic arts, under such name and style as they may choose, subject to any other applicable provisions of law, and thereby become a body corporate with all the powers incident to such a body, and may take and hold such property, both real and personal, as may be needful to promote the objects of their association.

Whenever any such association is formed subsequent to April 1, 1949, a copy of the articles of incorporation shall be filed with the Secretary of State, together with any other information the Secretary of State may require. A fee of ten dollars ($10.00) shall be paid to the Secretary of State when such articles are filed. Upon receipt of such articles in proper form, and such other information as may be required, and the filing fee, the Secretary of State shall issue a charter of incorporation.

The corporate existence shall continue as long as there are 10 members, during the will and pleasure of the General Assembly. (1852, c. 2, ss. 1, 2, 3; R. C., c. 2, ss. 6, 7; Code, s. 2220; Rev., ss. 3868, 3869; C. S., s. 4941; 1949, c. 829, s. 2.)

§ 106-506. Organization; officers; new members. — Such society shall be organized by the appointment of a president, two vice-presidents, a secretary and treasurer, and such other officers as they may deem proper, who shall thereafter be chosen annually, and hold their places until others shall be appointed. And the society may from time to time, on such conditions as may be prescribed, receive other members of the corporation. (1852, c. 2, s. 3; R. C., c. 2, s. 7; Code, s. 2221; Rev., s. 3869; C. S., s. 4942.)

§ 106-507. Exhibits exempt from State and county taxes. — Any society or association organized under the provisions of this Chapter, desiring to be

exempted from the payment of State, county, and city license taxes on its exhibits, shows, attractions, and amusements, shall each year, not later than 60 days prior to the opening date of its fair, file an application with the Secretary of Revenue for a permit to operate without the payment of said tax; said application shall state the various types of exhibits and amusements for which the exemption is asked, and also the date and place they are to be exhibited. The Secretary of Revenue shall immediately refer said application to the Commissioner of Agriculture for approval or rejection. If the application is approved by said Commissioner of Agriculture, the Secretary of Revenue shall issue a permit to said society or association authorizing it to exhibit within its fairgrounds and during the period of its fair, without the payment of any State, county, or city license tax, all exhibits, shows, attractions, and amusements as were approved. Provided, however, that the Secretary of Revenue shall have the right to cancel said permit at any time upon the recommendation of said Commissioner of Agriculture. Any society or association failing to so obtain a permit from the Secretary of Revenue or having its permit canceled shall pay the same State, county, and city license taxes as may be fixed by law for all other persons or corporations exhibiting for profit within the State shows, carnivals, or other attractions. (1905, c. 513, s. 2; Rev., s. 3871; C. S., s. 4944; 1935, c. 371, s. 107; 1949, c. 829, s. 2; 1973, c. 476, s. 193.)

Editor's Note. — The 1973 amendment substituted "Secretary of Revenue" for "Commissioner of Revenue" throughout the section.

§ 106-508. Funds to be used in paying premiums. — All moneys so subscribed, as well as that received from the State treasury as herein provided, shall after paying the necessary incidental expenses of such society, be annually paid for premiums awarded by such societies, in such sums and in such way and manner as they severally, under their bylaws, rules and regulations, shall direct, on such live animals, articles of production, and agricultural implements and tools, domestic manufacturers, mechanical implements, tools and productions as are of the growth and manufacture of the county or region, and also such experiments, discoveries, or attainments in scientific or practical agriculture as are made within the county or region wherein such societies are respectively organized. (1852, c. 2, s. 7; R. C., c. 2, s. 9; Code, s. 2223; Rev., s. 3873; C. S., s. 4945; 1949, c. 829, s. 2.)

§ 106-509. Annual statements to State Treasurer. — Each agricultural society entitled to receive money from the State Treasurer shall, through its treasurer, transmit to the Treasurer of the State, in the month of December or before, a statement showing the money received from the State, the amount received from the members of the society for the preceding year, the expenditures of all such sums, and the number of the members of such society. (1852, c. 2, s. 8; R. C., c. 2, s. 10; Code, s. 2224; Rev., s. 3874; C. S., s. 4946.)

§ 106-510. Publication of statements required. — Each agricultural society receiving money from the State under this Chapter shall, in each year, publish at its own expense a full statement of its experiments and improvements, and reports of its committees, in at least one newspaper in the State; and evidence that the requirements of this Chapter have been complied with shall be furnished to the State Treasurer before he shall pay to such society the sum of fifty dollars ($50.00) for the benefit of such society for the next year. (1852, c. 2, s. 9; R. C., c. 2, s. 11; Code, s. 2225; Rev., s. 3875; C. S., s. 4947.)

§ 106-511. Records to be kept; may be read in evidence. — The secretary of such society shall keep a fair record of its proceedings in a book provided for that purpose, which may be read in evidence in suits wherein the corporation

may be a party. (1852, c. 2, s. 5; R. C., c. 2, s. 12; Code, s. 2226; Rev., s. 3876; C. S., s. 4948.)

Part 3. Protection and Regulation of Fairs.

§ 106-512. Lien against licensees' property to secure charge. — All agricultural fairs which shall grant any privilege, license, or concession to any person, persons, firm, or corporation for vending wares or merchandise within any fairgrounds, or which shall rent any ground space for carrying on any kind of business in such fairgrounds, either upon stipulated price or for a certain percent of the receipts taken in by such person, persons, firm, or corporation, shall have the right to retain possession of and shall have a lien upon any or all the goods, wares, fixtures, and merchandise or other property of such person, persons, firm, or corporation until all charges for privileges, licenses, or concessions are paid, or until their contract is fully complied with. (1915, c. 242, s. 1; C. S., s. 4950.)

§ 106-513. Notice of sale to owner. — Written notice of such sale shall be served on the owner of such goods, wares, merchandise, or fixtures or other property 10 days before such sale, if he or it be a resident of the State, but if a nonresident of the State, or his or its residence be unknown, the publication of such notice for 10 days at the courthouse door and three other public places in the county shall be sufficient service of the same. (1915, c. 242, s. 2; C. S., s. 4951.)

§ 106-514. Unlawful entry on grounds a misdemeanor. — If any person, after having been expelled from the fairgrounds of any agricultural or horticultural society, shall offer to enter the same again without permission from such society; or if any person shall break over [open] the enclosing structure of said fairgrounds and enter the same, or shall enter the enclosure of said fairgrounds by means of climbing over, under or through the enclosing structure surrounding the same, or shall enter the enclosure through the gates without the permission of its gatekeeper or the proper officer of said fair association, he shall be guilty of a misdemeanor, and upon conviction shall be fined not more than fifty dollars ($50.00) or imprisoned not more than 30 days. (1870-1, c. 184, s. 3; Code, s. 2795; 1901, c. 291; Rev., s. 3669; C. S., s. 4952.)

§ 106-515. Assisting unlawful entry on grounds a misdemeanor. — It shall be unlawful for any person or persons to assist any other person or persons to enter upon the grounds of any fair association when an admission fee is charged, by assisting such other person or persons to climb over or go under the fence or by pulling off a plank or to enter the enclosed grounds by any trick or device or by passing out a ticket or a pass or in any other way. Any violation of this section shall be a misdemeanor and punishable by a fine not exceeding twenty dollars ($20.00) or imprisonment not exceeding 10 days. (1915, c. 242, ss. 3, 4; C. S., s. 4953.)

§ 106-516. Vendors and exhibitors near fairs to pay license. — Every person, firm, officer, or agent of any corporation who shall temporarily expose for sale any goods, wares, foods, soft drinks, ice cream, fruits, novelties, or any other kind of merchandise, or who shall operate any merry-go-round, Ferris wheel, or any other device for public amusement, within one fourth of a mile of any agricultural fair during such fair, shall pay a tax of one hundred dollars ($100.00) in each county in which he shall carry on such business, whether as a principal or agent: Provided, this section shall not apply to any business established 60 days prior to the beginning of such fair. (1915, c. 242, s. 5; C. S., s. 4954.)

§ 106-516.1. Carnivals and similar amusements not to operate without permit. — Every person, firm, or corporation engaged in the business of a carnival company or a show of like kind, including menageries, merry-go-rounds, Ferris wheels, riding devices, circus and similar amusements and enterprises operated and conducted for profit, shall, prior to exhibiting in any county annually staging an agricultural fair, apply to the sheriff of the county in which the exhibit is to be held for a permit to exhibit. The sheriff of the county shall issue a permit without charge; provided, however, that no permit shall be issued if he shall find the requested exhibition date is less than 30 days prior to a regularly advertised agricultural fair and so in conflict with G.S. 105-39. Exhibition without a permit from the sheriff of the county in which the exhibition is to be held shall constitute a misdemeanor and be punished by a fine or imprisonment, or both, in the discretion of the court: Provided, that nothing contained in this section shall prevent veterans' organizations and posts chartered by Congress or organized and operated on a statewide or nationwide basis from holding fairs or tobacco festivals on any dates which they may select if such fairs or festivals have heretofore been held as annual events. (1953, c. 854; 1963, c. 1127.)

Local Modification. — Franklin: 1953, c. 854; Greene: 1957, c. 738.

§ 106-517. Application for license to county commissioners. — Every such person mentioned in G.S. 106-516 shall apply in advance for a license to the board of county commissioners of the county in which he proposes to peddle, sell, or operate, and the board of county commissioners may in their discretion issue license upon the payment of the tax to the sheriff, which shall expire at the end of 12 months from its date. (1915, c. 242, s. 6; C. S., s. 4955.)

§ 106-518. Unlicensed vending, etc., near fairs a misdemeanor. — Any person violating the provisions of G.S. 106-516 and 106-517 shall be guilty of a misdemeanor, punishable by a fine not to exceed fifty dollars ($50.00) or imprisonment not to exceed 30 days, at the discretion of the court. (1915, c. 242, s. 7; C. S., s. 4956.)

§ 106-519. Commissioners may refuse to license shows within five miles. — The county commissioners of any county in North Carolina in which there is a regularly organized agricultural fair may refuse to allow any circus, menagerie, wild West show, dog and pony show, or carnival show, to exhibit within five miles of such fair from its beginning to its ending: Provided, that notice is given the sheriff by the commissioners of said county not to issue such license to said entertainments 60 days prior to the date of such exhibition. (1913, c. 163, s. 1; C. S., s. 4957.)

§ 106-520. Local aid to agricultural, animal, and poultry exhibits. — Any city, town, or county may appropriate not to exceed one hundred dollars ($100.00) to aid any agricultural, animal, or poultry exhibition held within such city, town, or county. (1919, c. 135; C. S., s. 4958.)

Local Modification. — Craven: 1955, c. 607, amended by 1957, c. 886; Edgecombe and Nash: 1953, c. 273; city of New Bern: 1955, c. 1125; city of Rocky Mount: 1953, c. 273.

Part 4. Supervision of Fairs.

§ 106-520.1. Definition. — As used in this Article, the word "fair" means a bona fide exhibition designed, arranged and operated to promote, encourage and improve agriculture, horticulture, livestock, poultry, dairy products, mechanical

fabrics, domestic economy, and 4-H Club and Future Farmers of America activities, by offering premiums and awards for the best exhibits thereof or with respect thereto. (1949, c. 829, s. 1.)

§ 106-520.2. Use of "fair" in name of exhibition. — It shall be unlawful for any person, firm, corporation, association, club, or other group of persons to use the word "fair" in connection with any exhibition, circus, show, or other variety of exhibition unless such exhibition is a fair within the meaning of G.S. 106-520.1. (1949, c. 829, s. 1.)

§ 106-520.3. Commissioner of Agriculture to regulate. — The Commissioner of Agriculture, with the advice and approval of the State Board of Agriculture, is hereby authorized, empowered and directed to make rules and regulations with respect to classification, operation and licensing of fairs, so as to insure that such fairs shall conform to the definition set out in G.S. 106-520.1, and shall best promote the purposes of fairs as set out in such definition. Every fair, and every exhibition using the word "fair" in its name, except fairs classified by the Commissioner of Agriculture as noncommercial community fairs, must comply with the standards, rules and regulations set up and promulgated by the Commissioner of Agriculture, and must secure a license from the Commissioner of Agriculture before such exhibition or fair is staged or operated. No license shall be issued for any such exhibition or fair unless it meets the standards and complies with the rules and regulations of the Commissioner of Agriculture with respect thereto. (1949, c. 829, s. 1.)

§ 106-520.4. Local supervision of fairs. — No county or regional fairs shall be licensed to be held unless such fair is operated under supervision of a local board of directors who shall employ appropriate managers, who shall be responsible for the conduct of such fair, and otherwise comply with the standards, rules and regulations promulgated by the Commissioner of Agriculture. The Commissioner of Agriculture, with the advice and approval of the State Board of Agriculture, shall make rules and regulations requiring county and regional fairs to emphasize agricultural, educational, home and industrial exhibits by providing adequate premiums. (1949, c. 829, s. 1.)

§ 106-520.5. Reports. — Every fair shall make such reports to the Commissioner of Agriculture, as said Commissioner may require. (1949, c. 829, s. 1.)

§ 106-520.6. Premiums and premium lists supplemented. — The State Board of Agriculture may supplement premiums and premium lists for county and regional fairs and the North Carolina State Fair, and improve and expand the facilities for exhibits at the North Carolina State Fair, at any time or times, out of any funds which may be available for such purposes. (1949, c. 829, s. 1.)

§ 106-520.7. Violations made misdemeanor. — Any person who violates any provision of G.S. 106-520.1 through G.S. 106-520.6 is guilty of a misdemeanor punishable by a fine or imprisonment in the discretion of the court. (1949, c. 829, s. 1.)

ARTICLE 46.

Erosion Equipment.

§ 106-521. Counties authorized to provide farmers with erosion equipment. — The county commissioners in the several counties of the State are hereby authorized and empowered to purchase the necessary equipment to be used as provided in this Article by farmers in the cultivation of their lands in such manner as may best tend to prevent erosion; and they are authorized

to put such equipment as they deem necessary for the purpose in the hands of farmers who may apply for the same, either by way of resale to the said farmers, or upon a rental basis, or by guarantee, as may in their judgment be deemed best, of the purchase price of the said equipment directly sold to the said farmers. (1935, c. 172, s. 1.)

Local Modification. — Granville: 1953, c. 1240.

§ 106-522. Application for assistance. — Any person or persons, corporation or concern, engaged in the cultivation of a farm or farms in this State may apply to the county commissioners for assistance under this Article, stating in the said application as nearly as may be the size or area of the cultivated lands, its condition, the kind of soil, the amount of erosion, if any, the topography of the farm, its present manner of drainage and the kinds of crops usually cultivated thereon. It shall also state what means have been used heretofore, if any, to prevent soil erosion, and specifically the extent to which erosion now exists upon the premises. At any time subsequent to the said application, if relief is extended to him, he shall, when so requested by the said county commissioners or any other person delegated by them to receive the information, make detailed reports as to the condition of his said cultivated lands, the extent to which provision has been made thereon to prevent soil erosion, with the results of same. There shall also be stated in the said application the kind and quantity of equipment which, in the judgment of the applicant, is necessary for use upon his farm. (1935, c. 172, s. 2.)

§ 106-523. Investigation and extending relief. — Upon the filing of such application the county commissioners shall cause due investigation to be made with reference thereto, and for their guidance; shall fully consider the same and if, in their opinion, the relief asked for should be extended, they shall thereupon proceed to supply or have supplied such equipment as in their judgment may be necessary under the circumstances, as provided in this Article. (1935, c. 172, s. 3.)

§ 106-524. Purchase of equipment and furnishing to farmers; notes and security from applicants; rental contracts; guarantee of payment. — The county commissioners are authorized and empowered to purchase the equipment by them deemed to be necessary and supply the applicant therewith, upon such terms and conditions of purchase, rental or repayment as may be deemed by them just and proper, and which will save the county from loss in the matter. To that end, they are authorized to accept from the applicant such notes and security, if any by them are deemed necessary, or shall make with them such rental contracts as may be reasonably prudent and safe in the premises. They are further authorized and empowered, when in their judgment it may be deemed advisable, to guarantee the payment to the seller, for such equipment as may be directly purchased by the applicant for the use aforesaid: Provided, however, that the purchase of the said equipment has been previously approved by the county commissioners. (1935, c. 172, s. 4.)

§ 106-525. Guarantee of payment where equipment purchased by federal agencies. — Where the said equipment may be purchased by any federal agency and by it furnished to any person, persons, firm or corporation engaged in the actual cultivation of the soil, the county commissioners are authorized, under such terms and conditions as to them may seem advisable, and as shall conserve the public interest and be just and proper to the county, to guarantee the payment of the purchase price of such equipment in full or the interest upon

the obligations made in their purchase, and may do so in full or in part. (1935, c. 172, s. 5.)

§ 106-526. Expense of counties extending relief made lien on premises of applicant. — In the event the county commissioners shall extend any relief under this Article, to the extent of the money furnished or the obligation of the county with respect thereto, the same shall be a lien upon the premises, lands and tenements of the owner and applicant for such relief, securing the repayment of the funds furnished by the county and securing the county against any loss by reason of its obligation in any respect, the said lien to be foreclosed in all respects as provided in the law for deeds of trust or real estate mortgages: Provided, however, that in case the county itself has entered into an obligation in order to extend to any persons herein named the relief provided in this Article, the county shall not be postponed in its relief until loss is actually incurred by it, but may proceed in accordance with the contract and agreement made with the applicant for relief, and when the obligations of the county in any respect are due: Provided, further, that the lien created by this section shall not be effective as against innocent purchasers for value unless and until notice of such lien shall be docketed in the office of the clerk of the superior court of the county in which the land lies in the manner and form provided by law for perfecting laborer's or mechanic's liens against real property. (1935, c. 172, s. 6.)

§ 106-527. Counties excepted. — This Article shall not apply to the Counties of Alexander, Alleghany, Ashe, Avery, Bladen, Buncombe, Camden, Columbus, Cumberland, Davie, Gates, Haywood, Hyde, Jackson, Lincoln, Macon, Madison, Moore, New Hanover, Pamlico, Pasquotank, Rutherford, Sampson, Transylvania, Washington, Watauga, Wilkes, and Yadkin. (1935, c. 172, s. 7; 1937, c. 25.)

ARTICLE 47.

State Marketing Authority.

§ 106-528. State policy and purpose of Article. — It is declared to be the policy of the State of North Carolina and the purpose of this Article to promote, encourage and develop the orderly and efficient marketing of products of the home, farm, sea and forest; to establish, maintain, supervise and control, with the cooperation of counties, cities and towns, centrally located markets for the sale and distribution of such products, so as to promote a steady flow of commodities, properly graded and labeled, into the channels of trade at the time and place to enable the producer to get the market price and the consumer to get a product in keeping with the price paid. (1941, c. 39, s. 1.)

§ 106-529. State Marketing Authority created; members and officers; commodity advisers; meetings and expenses. — To secure these aims, there is hereby created an incorporated public agency of the State, to be known as the State Marketing Authority, hereinafter referred to as the "Authority." It shall consist of the members of the State Board of Agriculture, and the Commissioner of Agriculture shall be the chairman. They shall perform the duties and exercise the powers herein set out as a part of their official duties as members of the Board of Agriculture. The Governor shall appoint from time to time commodity advisers to plan with the Authority the programs undertaken in their respective communities. The Authority shall elect and prescribe the duties of a secretary-treasurer, who shall not be a member of the Authority. He shall give bond in such amount as the Authority shall determine in some reliable surety company doing business in North Carolina, and the Authority shall pay the premiums. The Authority shall meet in regular session annually at a fixed

place and date, and shall meet in special session at such other times and places as the chairman may request. The members shall receive no salary, but shall receive actual expenses plus seven dollars ($7.00) per day for actual time spent in performing their duties. (1941, c. 39, s. 2.)

§ 106-530. Powers of Authority. — The Authority shall have the following powers:

(1) To sue and be sued in its corporate name in any court or before any administrative agency of the State or of the United States, and to enter into agreements with the United States Department of Agriculture or any other legally constituted State or federal agency, or with any county, city or town in the furtherance of the purposes of this Article.

(2) To plan, build, construct, or cause to be built or constructed, or to purchase, lease or acquire the use of any warehouses or other facilities that may be necessary for the successful operation by the Authority of wholesale markets for products of the home, farm, sea and forest at chosen points in North Carolina. The Authority may make such contracts as may be needed for these purposes. In no case shall the Authority be responsible for any rent except from the income of the market in excess of other operating expenses. The Authority may select and employ for each market capable managers, who shall be familiar with the problems of the grower and the distributor, and of the marketing of farm products, and who shall have the business ability and training to operate a market and to plan for its proper development and growth in order best to serve the interests of producers, distributors, consumers in the area, and the general public. The managers may employ assistants and agents with the approval of the Authority. The Authority may make such regulations as will promote the policy of this Article, as to the manner in which the markets shall be operated, the business conducted, and stalls sublet to dealers.

(3) To fix the terms upon which individual, cooperative or corporate wholesale merchants, warehouses or warehousemen may place their facilities or services under the supervision and regulation of the Authority. The Authority may extend to any such wholesale merchants, warehouses or warehousemen marketing benefits in the form of inspection, market informational and news service and may make regulations as to the operation of such facilities or services and as to forms, reports, handling, grades, weights, packages, labels, and other standards for the products handled by such merchants, warehouses or warehousemen.

(4) To fix rentals and charges for each type of service or facility in the markets under its control, taking into consideration the cost of such facility or service, the interest and amortization period required, a proper relationship between types of operators in the market, cost of operation, and the need for reasonable reserves for repairs, depreciation, expansion, and similar items. These rentals and charges shall not bring any profit to any agency over and above the costs of operation, necessary reserves, and debt service.

(5) To issue permits to itinerant dealers in intrastate commerce, who express a willingness to come under the program of the State Marketing Authority. Such permits shall enable the holders to solicit orders and to buy and sell produce under the rules and regulations of the Authority and in conformance with G.S. 106-185 to 106-196 and not inconsistent with the United States Perishable Agricultural Commodities Act, 1930 (46 Stat. 531).

(6) To issue bonds and other securities to obtain funds to acquire, construct, and equip warehouses to be used in carrying out the purposes of this

Article. The bonds shall be entitled "North Carolina Marketing Authority Bonds" and shall be issued in such form and denominations and shall mature at such time or times, not exceeding 30 years after their date, and shall bear such interest, not exceeding five percent (5%) per annum, payable either annually or semiannually, as the Authority shall determine. They shall be signed by the chairman of the Authority, and the corporate seal affixed or impressed upon each bond and attested by the secretary-treasurer of the Authority. The coupons shall bear the facsimile signature of the chairman officiating when the bonds are issued. Any issue of these bonds and notes may be sold publicly, or at private sale for not less than par to the Reconstruction Finance Corporation or other State or federal agency or may be given in exchange to any county, city, town or individual for the lease or purchase of property to be used by the Authority. To secure such indebtedness, the Authority may give mortgages or deeds of trust, executed in the same manner as the bonds, on the property purchased or acquired, and may pledge the revenues from the markets in excess of operating expenses, interest and insurance: Provided, that each market shall be operated on a separate financial basis, and only such revenues and properties of each separate market shall be liable for the obligations of that market. No obligations incurred by the Authority shall be obligations of the State of North Carolina or any of its political subdivisions, or a burden on the taxpayers of the State or any political subdivision. This does not prevent the State or any of its agencies, departments or institutions, or any private or public agency from making a contribution to the Authority, in money or services or otherwise.

Bonds and notes issued under this Article shall be exempt from all State, county or municipal taxes or assessments of any kind; the interest shall not be taxable as income, nor shall the notes, bonds, nor coupons be taxable as part of the surplus of any bank, trust company or other corporation.

Any resolution or resolutions authorizing any bonds shall contain provisions which shall be a part of the contract with the holders of the bonds, as to:

a. Pledging the fees, rentals, charges, dues, tolls, and inspection and sales fees, and other revenues to secure payment of the bonds;
b. The rates of the fees or tolls to be charged for the use of the facilities of the warehouse or warehouses, and the use and disposition of the revenues from its operation;
c. The setting aside of reserves or working funds, and the regulation and disposition thereof;
d. Limitations on the purposes to which the proceeds of sale of any issue of bonds may be applied;
e. Limitations on the issuance of additional bonds; and
f. The procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent thereto, and the manner in which such consent may be given.

(7) To accept grants in aid or free work.
(8) To adopt, use and alter a corporate seal.
(9) To dispossess tenants for nonpayment of rent and for failure to abide by the regulations of the Authority.
(10) To hire necessary agents, engineers, and attorneys, and to do all things necessary to carry out the powers granted by this Article. (1941, c. 39, s. 3.)

§ 106-531. Discrimination prohibited; restriction on use of funds. — The Authority shall not permit:

(1) Any discrimination against the sale, on any of the markets under their control, of any farm product because of type of operator or area of production.

(2) The use of any of its funds for any purpose other than for the support, necessary expansion, and operation of this State marketing system, or the use of any of its funds to establish any retail market or to build or furnish more than one market in any town. (1941, c. 39, s. 4.)

§ 106-532. Fiscal year; annual report to Governor. — The Authority shall operate on a fiscal year, which shall be from July first to June thirtieth. The Commissioner of Agriculture shall file an annual report with the Governor containing a statement of receipts and disbursements and the purposes of such disbursements, and a complete statement of the financial condition of the Authority, and an account of its activities for the year. (1941, c. 39, s. 5.)

§ 106-533. Application of revenues from operation of warehouses. — All rentals and charges, fees, tolls, storage and sales commissions and revenues of any sort from operation of each warehouse shall be applied to the payment of the cost of operating and administering the warehouse and market facilities including interest on bonds and other evidences of indebtedness issued therefor, and the cost of insurance against loss by injury to persons or property, and the balance shall be paid to the secretary-treasurer of the Authority and be used to provide a sinking fund to pay at or before maturity all bonds and notes and other evidences of indebtedness incurred for and on behalf of the building, constructing, maintaining and operating of each warehouse. A separate sinking fund account shall be kept for each market, and no market shall be liable for the obligations of any other market. (1941, c. 39, s. 6.)

§ 106-534. Exemption from taxes and assessments. — The Authority shall be regarded as performing an essential governmental function in constructing, operating or maintaining these markets, and shall be required to pay no taxes or assessments on any property acquired or used by it for the purposes herein set out. (1941, c. 39, s. 7.)

ARTICLE 48.

Relief of Potato Farmers.

§ 106-535. Guaranty of minimum price to growers of Irish potatoes under share planting system. — From and after March 15, 1941, every person, firm, association or corporation engaged in the practice of supplying growers of Irish potatoes in this State with seed potatoes and fertilizer and other supplies for the purpose of growing a crop of Irish potatoes under the system commonly known as the share planting system and who enter into a contract with such grower and/or growers on or before planting them to furnish such grower with seed potatoes, fertilizer or other necessary supplies, or to perform services in connection with the gathering of such crop and marketing the same, shall at the time of entering into such contract, agree in writing, with such grower that he or it will guarantee that the grower shall receive at the time such potatoes are marketed an amount of not less than ten dollars ($10.00) for each bag of seed potatoes planted by the grower or growers from such person, firm, association or corporation who, under the agreement, furnished such seed potatoes and other supplies to the grower or growers thereof. (1941, c. 354, s. 1.)

Local Modification. — Bladen, Durham, Greene, Lenoir, Pender, Randolph, Rockingham, Sampson and Union: 1941, c. 354, s. 5.

§ 106-536. Additional net profits due grower not affected. — The minimum amount to be paid the grower by those furnishing said supplies under the terms of this Article shall in nowise affect any additional net profit due the grower, should any such additional profits be shown. (1941, c. 354, s. 2.)

§ 106-537. Minimum payments only compensation for labor and use of equipment, land, etc. — The payment of the stipulated ten dollars ($10.00) per bag of said seed potatoes furnished said grower or growers by any firm, person, association or corporation shall be compensation only for labor and work done and for the use of any animal or machine and equipment used or furnished by said grower or growers, and also use of land in growing said potato crop, and this amount shall be paid to said grower from returns from said crops so produced; and the said ten dollars ($10.00) shall not be computed as any part of any other expenses furnished by said person, firm, association or corporation furnishing other materials or supplies for the purpose of said share planting. (1941, c. 354, s. 3.)

§ 106-538. Time of payments; Article not applicable to landlord-tenant contracts. — The said sum of ten dollars ($10.00) per bag of seed potatoes shall be paid to said grower or growers by said firm, person, association or corporation as herein provided, for share planting of potatoes, not later than 30 days after the delivery of last potatoes grown under the share planting contract existing between said grower or growers and the said person, firm, association or corporation: Provided, that nothing in this Article shall apply to contracts entered into between landowners and their respective tenants. (1941, c. 354, s. 4.)

Article 49.

Poultry; Hatcheries; Chick Dealers.

§ 106-539. National poultry and turkey improvement plans. — In order to promote the poultry industry of the State, the North Carolina Department of Agriculture is hereby authorized to cooperate with the United States Department of Agriculture in the operation of the national poultry and turkey improvement plans. (1945, c. 616, s. 1; 1969, c. 464.)

§ 106-540. Rules and regulations. — After public hearing following 30 days' public notice, the North Carolina Board of Agriculture is hereby authorized to make such regulations as may be necessary to accomplish the following:

(1) Carry out the provisions of the national poultry and turkey improvement plans.
(2) Set up minimum standards for the operation of hatcheries.
(3) Regulate hatching egg dealers, chick dealers, poult dealers, and jobbers.
(4) Regulate the shipping into this State of baby chicks, turkey poults and hatching eggs.
(5) Facilitate the control and eradication of contagious and infectious diseases of poultry. (1945, c. 616, s. 2; 1969, c. 464.)

§ 106-541. Definitions. — For the purpose of this Article, a hatchery shall be defined as any establishment that operates hatchery equipment for the production of baby chicks or poults. A hatching egg dealer, chick dealer or jobber shall mean any person, firm or corporation that buys hatching eggs, baby chicks or turkey poults and sells or offers them for sale. The term "mixed chicks" or

"assorted chicks" shall mean chicks produced from eggs from purebred females of a distinct breed mated to a purebred male of a distinct breed. (1945, c. 616, s. 3; 1969, c. 464.)

§ 106-542. Hatcheries, chick dealers and others to obtain permit to operate. — No person, firm or corporation shall operate a hatchery and no chick or hatching egg dealer or jobber shall operate within this State without first obtaining a permit from the Department of Agriculture to so operate. Said permit may be cancelled by the Department of Agriculture for violation of this Article or the regulations promulgated thereunder by the Board of Agriculture. Any person who is refused a permit or whose permit is revoked may appeal within 30 days of such refusal or revocation to the superior court of the county wherein the hatchery is or is sought to be located. (1945, c. 616, s. 4; 1969, c. 464.)

§ 106-543. Requirements of national poultry and turkey improvement plans must be met. — All baby chicks, turkey poults and hatching eggs produced, sold or offered for sale shall originate in flocks that meet the requirements of the national poultry and turkey improvement plans as administered by the North Carolina Department of Agriculture and the regulations issued by authority of this Article for the control of pullorum disease and other infectious diseases provided that nothing in this Article shall require any hatchery to adopt the national poultry improvement plan or national turkey improvement plan. (1945, c. 616, s. 5; 1969, c. 464.)

§ 106-544. Shipments from out of State. — All baby chicks, turkey poults and hatching eggs shipped or otherwise brought into this State shall originate in flocks that meet the minimum requirements of pullorum and typhoid disease control provided for in this Article and the regulations issued by authority of this Article, and shall be accompanied by a certificate approved by the official state agency or the livestock sanitary officials of the state of origin certifying same. (1945, c. 616, s. 6; 1969, c. 464.)

§ 106-545. False advertising. — No hatchery, hatchery dealer, chick dealer or jobber shall use false or misleading advertising in the sale of their products. (1945, c. 616, s. 7; 1969, c. 464.)

§ 106-546. Notice describing grade of chicks to be posted. — All hatcheries, chick dealers or jobbers offering chicks for sale to the public shall post in a conspicuous manner in their place of business a poster furnished by the North Carolina Department of Agriculture describing the grade of chicks approved by the North Carolina Department of Agriculture. (1945, c. 616, s. 8; 1969, c. 464.)

§ 106-547. Records to be kept. — Every hatchery, hatching egg dealer, chick dealer or jobber shall keep such records of operation as the regulations of the Department of Agriculture may require for the proper inspection of said hatchery, dealer or jobber. (1945, c. 616, s. 9; 1969, c. 464.)

§ 106-548. Fees; quarantine; compulsory testing. — For the purpose of carrying out the provisions of this Article and the regulations issued thereunder, the Department of Agriculture is authorized to collect annually from every hatchery a fee not to exceed ten dollars ($10.00) where the egg capacity is not more than 50,000 eggs and twenty dollars ($20.00) where the egg capacity is 50,000 to 100,000 eggs, and thirty dollars ($30.00) where the egg capacity is over 100,000, provided the fee for hatcheries with egg capacity not exceeding 1,000 eggs may be waived at the discretion of the Commissioner of Agriculture. Chick dealers and jobbers shall pay a fee of three dollars ($3.00) annually, said fees to be used for the enforcement of this Article. The North Carolina Board of Agriculture is authorized to establish fee schedules not in excess of the actual

cost thereof for pullorum and other disease testing, and the performance of services such as culling and selecting by Department personnel. When the State Veterinarian receives information or has reason to believe that pullorum disease or fowl typhoid exists in any poultry or that they have been exposed to one of these diseases, he shall promptly cause said poultry to be quarantined on the premises where located. Said poultry or hatching eggs shall not be removed from the premises where quarantined until quarantine has been released by the State Veterinarian or his authorized representative. A permit to move such infected or exposed poultry to immediate slaughter, or to another premise under quarantine, may be issued by the State Veterinarian or his authorized representative. The Board of Agriculture is empowered to make regulations under which compulsory testing of poultry for pullorum disease or fowl typhoid may be required. (1945, c. 616, s. 10; 1969, c. 464.)

§ 106-549. Violation a misdemeanor. — Any person, firm or corporation who shall willfully violate any provision of this Article or any rule or regulation duly established by authority of this Article, shall be guilty of a misdemeanor and shall be fined not in excess of five hundred dollars ($500.00) or imprisoned not in excess of six months, or both fined and imprisoned, in the discretion of the court. (1945, c. 616, s. 11; 1969, c. 464.)

ARTICLE 49A.

Voluntary Inspection of Poultry.

§ 106-549.1. Short title. — This Article shall be known as the "North Carolina Voluntary Inspection of Poultry Law." (1955, c. 1233, s. 1.)

§ 106-549.2. Definitions. — The following words, terms, and phrases shall be construed for the purpose of this Article as follows:

(1) "Commissioner" means Commissioner of Agriculture of North Carolina.
(2) "Condition and wholesomeness" means the condition of any product and its healthfulness and fitness for human food.
(3) "Identify" means to apply official identification to products or the container thereof.
(4) "Inspector" means any person who is licensed or designated by the State Supervisor of Poultry Inspection to inspect and certify the condition and wholesomeness of poultry products in accordance with the provisions of this Article or the rules and regulations made pursuant thereto.
(5) "Official identification" means the symbol represented by a stamp, label, seal, or other device approved by the Commissioner and affixed to any product, or to any container thereto, stating that the product was inspected or graded or both.
(6) "Official plant" means one or more buildings, or parts thereof, comprising a single plant in which the facilities and methods of operation therein have been approved by the Commissioner as suitable and adequate for processing poultry in accordance with the rules and regulations of the Board.
(7) "Person" means any individual, partnership, association, business trust, corporation, or any organized group of persons, whether incorporated or not.
(8) "Poultry" means any kind of domesticated bird, including, but not being limited to chickens, turkeys, ducks, pigeons, geese, and guineas.
(9) "Poultry products" means any giblets or any edible part of dressed poultry other than eviscerated poultry or any article of food for human consumption which is prepared in part from any edible portion of

dressed poultry or from any product derived wholly from such edible portion.

(10) "Ready-to-cook poultry" means any dressed poultry from which the protruding pinfeathers, vestigial feathers (hair or down as the case may be), head, shanks, crop, oil gland, trachea, esophagus, entrails, reproductive organs and lungs have been removed, and with or without the giblets, is ready to cook without need of further processing. Ready-to-cook poultry also means any cut-up or disjointed portion of poultry. (1955, c. 1233, s. 2.)

§ 106-549.3. Authority to enter into voluntary agreements providing for inspection. — The Commissioner of Agriculture is hereby granted permission to enter into voluntary agreements with individuals, firms, or corporations operating poultry processing plants in this State in which dressed poultry is processed, cut up, or otherwise handled, for the purpose of establishing official inspection for ready-to-cook poultry and poultry products for condition and wholesomeness. The Commissioner is authorized to cooperate with other branches of the government of the State of North Carolina, or the Secretary of Agriculture of the United States, if in his judgment such an agreement and arrangement for providing inspection service will meet the requirements of the North Carolina poultry industry. (1955, c. 1233, s. 3.)

§ 106-549.4. Rules and regulations. — The Board of Agriculture is authorized to promulgate and adopt such reasonable rules and regulations as may be necessary to carry out the provisions of this Article. These rules and regulations shall include minimum requirements for plant facilities; processing methods and techniques; methods of determining the condition and wholesomeness of poultry, poultry products, or any edible parts thereof; and other administrative factors that may arise in administering this Article. (1955, c. 1233, s. 4.)

§ 106-549.5. Who shall be eligible for this service. — Any person operating a processing plant in North Carolina in accordance with the provisions of this Article and the rules and regulations duly adopted by the Board of Agriculture shall be eligible for this service. (1955, c. 1233, s. 5.)

§ 106-549.6. Cost of inspection. — The cost of this inspection service shall be borne by the person receiving this service. This cost shall include the salary or salaries of the inspector or inspectors assigned to the plant for the purpose of inspecting poultry and poultry products processed or otherwise handled therein. In addition, a reasonable administrative charge may be added to the cost of this service. (1955, c. 1233, s. 6.)

§ 106-549.7. Payment of inspection costs. — The payment of inspection costs and other costs as provided in this Article shall be paid to the North Carolina Department of Agriculture. (1955, c. 1233, s. 7.)

§ 106-549.8. Plant number. — Upon receiving an application from any person, and after it is determined that the plant, plant facilities, operating procedures and techniques in the plant in which inspection service is requested meet the provisions of this Article and the rules and regulations duly adopted by the Board of Agriculture, the Commissioner shall issue the applicant an official plant number for the particular plant or facility in which the service is requested. (1955, c. 1233, s. 8.)

§ 106-549.9. Identifying officially inspected poultry, poultry products, and edible parts thereof. — The Commissioner is hereby granted authority to issue, approve, or otherwise give permission for poultry, poultry products, and other edible parts to be officially identified with a stamp, label, or other device for all

or part of any poultry processed in official plants. This identification shall include, but not be limited to, the official plant number. (1955, c. 1233, s. 9.)

§ 106-549.10. Inspection in official plants. — All dressed poultry that is eviscerated in an official plant where inspection service is maintained shall be processed in a sanitary manner. Dressed poultry may be eviscerated in such plants without inspections for condition and wholesomeness but uninspected and inspected operations may not be carried on simultaneously except in plants where processing rooms (including packing rooms) are separate or when by other acceptable means effective segregation of inspection [inspected] and uninspected product[s] is maintained. (1955, c. 1233, s. 10.)

§ 106-549.11. Supervision of inspection program. — The supervision of this inspection program shall be under the State Veterinarian or person designated by the Commissioner or under the State Veterinarian or the person designated by the Commissioner in cooperation with the supervisor of the inspection program of the United States Department of Agriculture in the event a cooperative arrangement is carried on between the North Carolina Department of Agriculture and the United States Department of Agriculture. (1955, c. 1233, s. 11.)

§ 106-549.12. Who shall inspect poultry. — The State Veterinarian or person designated by the Commissioner shall have the authority to license, designate, or otherwise determine qualified personnel who may inspect poultry as provided in this Article. These inspectors so designated shall have supervision over plant sanitation, inspection of poultry, and carrying out the rules and regulations adopted by the Board of Agriculture. (1955, c. 1233, s. 12.)

§ 106-549.13. Withdrawal of service. — In the event any person having official inspection service in his plant, or plants, shall fail to abide by the provisions of this Article or the rules and regulations adopted by the Board of Agriculture or to terms in the agreement with the North Carolina Department of Agriculture providing for inspection service, the Commissioner shall have the right to withdraw this service. The Commissioner shall also have the authority to reinstate the service after compliance with the rules and regulations have been met. The agreement may also be terminated by the applicant by giving the Commissioner a 30-day notice. (1955, c. 1233, s. 13.)

§ 106-549.14. Exemptions. — The provisions of this Article shall not apply to any individual raising and processing poultry, ready-to-cook poultry or poultry products without the consent of such individual. (1955, c. 1233, s. 13½.)

ARTICLE 49B.

Meat Inspection Requirements; Adulteration and Misbranding.

§ 106-549.15. Definitions. — As used in this Article, except as otherwise specified, the following terms shall have the meanings stated below:

(1) "Adulterated" shall apply to any carcass, part thereof, meat or meat food product under one or more of the following circumstances:

a. If it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance, such article shall not be considered adulterated under this clause if the quantity of such substance in or on such article does not ordinarily render it injurious to health;

b. 1. If it bears or contains (by reason of administration of any substance to the live animal or otherwise) any added poisonous or added deleterious substance (other than one which is (i) a

pesticide chemical in or on a raw agricultural commodity; (ii) a food additive; or (iii) a color additive) which may, in the judgment of the Commissioner, make such article unfit for human food;

2. If it is, in whole or in part, a raw agricultural commodity and such commodity bears or contains a pesticide chemical which is unsafe within the meaning of section 408 of the Federal Food, Drug, and Cosmetic Act;
3. If it bears or contains any food additive which is unsafe within the meaning of section 409 of the Federal Food, Drug, and Cosmetic Act;
4. If it bears or contains any color additive which is unsafe within the meaning of section 706 of the Federal Food, Drug, and Cosmetic Act: Provided, that an article which is not adulterated under clause 2, 3, or 4 shall nevertheless be deemed adulterated if use of the pesticide chemical, food additive or color additive in or on such article is prohibited by order of the Commissioner in establishments at which inspection is maintained under this Article;

c. If it consists in whole or in part of any filthy, putrid, or decomposed substance or is for any other reason unsound, unhealthful, unwholesome, or otherwise unfit for human food;

d. If it has been prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health;

e. If it is, in whole or in part, the product of an animal which has died otherwise than by slaughter;

f. If its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health;

g. If it has been intentionally subjected to radiation, unless the use of the radiation was in conformity with a regulation or exemption in effect pursuant to section 409 of the Federal Food, Drug, and Cosmetic Act;

h. If any valuable constituent has been in whole or in part omitted or abstracted therefrom; or if any substance has been substituted, wholly or in part therefor; or if damage or inferiority has been concealed in any manner; or if any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength, or make it appear better or of greater value than it is; or

i. If it is margarine containing animal fat and any of the raw material used therein consist in whole or in part of any filthy, putrid, or decomposed substance.

(2) "Animal food manufacturer" means any person, firm, or corporation engaged in the business of manufacturing or processing animal food derived wholly or in part from carcasses, or parts or products of the carcasses, of cattle, sheep, swine, goats, horses, mules, or other equines.

(3) "Authorized representative" means the Director of the Meat and Poultry Inspection Service of the North Carolina Department of Agriculture.

(4) "Board" means the North Carolina Board of Agriculture.

(5) "Capable of use as human food" shall apply to any carcass, or part or product of a carcass, of any animal, unless it is denatured or otherwise

identified as required by regulations prescribed by the Board to deter its use as human food, or it is naturally inedible by humans.

(6) "Commissioner" means the North Carolina Commissioner of Agriculture or his authorized representative.

(7) "Federal Food, Drug, and Cosmetic Act" means the act so entitled, approved June 25, 1938 (52 Stat. 1040), and acts amendatory thereof or supplementary thereto.

(8) "Federal Meat Inspection Act" means the act so entitled approved March 4, 1907, (34 Stat. 1260), as amended by the Wholesome Meat Act (81 Stat. 584).

(9) "Firm" means any partnership, association, or other unincorporated business organization.

(10) "Intrastate commerce" means commerce within this State.

(11) "Label" means a display of written, printed, or graphic matter upon the immediate container (not including package liners) of any article.

(12) "Labeling" means all labels and other written, printed, or graphic matter (i) upon any article or any of its containers or wrappers, or (ii) accompanying such article.

(13) "Meat broker" means any person, firm, or corporation engaged in the business of buying or selling carcasses, parts of carcasses, meat, or meat food products of cattle, sheep, swine, goats, horses, mules, or other equines on commission, or otherwise negotiating purchases or sales of such articles other than for his own account or as an employee of another person, firm, or corporation.

(14) "Meat food product" means any product capable of use as human food which is made wholly or in part from any meat or other portion of the carcass of any cattle, sheep, swine, or goats, excepting products which contain meat or other portions of such carcasses only in a relatively small proportion or historically have not been considered by consumers as products of the meat food industry, and which are exempted from definition as a meat food product by the Board under such conditions as it may prescribe to assure that the meat or other portions of such carcasses contained in such product are not adulterated and that such products are not represented as meat food products. This term as applied to food products of equines shall have a meaning comparable to that provided in this subdivision with respect to cattle, sheep, swine, and goats.

(15) "Misbranded" shall apply to any carcass, part thereof, meat or meat food product under one or more of the following circumstances:

a. If its labeling is false or misleading in any particular;

b. If it is offered for sale under the name of another food;

c. If it is imitation of another food, unless its label bears, in type of uniform size and prominence, the word "imitation" and immediately thereafter, the name of the food imitated;

d. If its container is so made, formed, or filled as to be misleading;

e. If in a package or other container unless it bears a label showing (i) the name and place of business of the manufacturer, packer, or distributor; and (ii) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count; provided, that under clause (ii) of this paragraph e, reasonable variations may be permitted, and exemptions as to small packages may be established, by regulations prescribed by the Board;

f. If any word, statement, or other information required by or under authority of this or the subsequent Article to appear on the label or other labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements,

designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

g. If it purports to be or is represented as a food for which a definition and standard of identity or composition has been prescribed by regulations of the Board under G.S. 106-549.21 unless (i) it conforms to such definition and standard, and (ii) its label bears the name of the food specified in the definition and standard and, insofar as may be required by such regulations, the common names of optional ingredients (other than spices, flavoring, and coloring) present in such food;

h. If it purports to be or is represented as a food for which a standard or standards of fill of container have been prescribed by regulations of the Board under G.S. 106-549.21, and it falls below the standard of fill of container applicable thereto, unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard;

i. If it is not subject to the provisions of paragraph g, unless its label bears (i) the common or usual name of the food, if any there be, and (ii) in case it is fabricated from two or more ingredients, the common or usual name of each such ingredient; except that spices, flavorings, and colorings may, when authorized by the Commissioner, be designated as spices, flavorings, and colorings without naming each: Provided, that, to the extent that compliance with the requirements of clause (ii) of this paragraph i is impracticable, or results in deception or unfair competition, exemptions shall be established by regulations promulgated by the Board;

j. If it purports to be or is represented for special dietary uses, unless its label bears such information concerning its vitamin, mineral, and other dietary properties as the Board determines to be, and by regulations prescribes as, necessary in order fully to inform purchasers as to its value for such uses;

k. If it bears or contains any artificial flavoring. artificial coloring, or chemical preservative, unless it bears labeling stating that fact: Provided, that, to the extent that compliance with the requirements of this paragraph k is impracticable, exemptions shall be established by regulations promulgated by the Board; or

l. If it fails to bear, directly thereon or on its container, as the Board may by regulations prescribe, the inspection legend and, unrestricted by any of the foregoing, such other information as the Board may require in such regulations to assure that it will not have false or misleading labeling and that the public will be informed of the manner of handling required to maintain the article in a wholesome condition.

(16) "Official certificate" means any certificate prescribed by regulations of the Board for issuance by an inspector or other person performing official functions under this or the subsequent Article.

(17) "Official device" means any device prescribed or authorized by the Board for use in applying any official mark.

(18) "Official inspection legend" means any symbol prescribed by regulations of the Board showing that an article was inspected and passed in accordance with this or the subsequent Article.

(19) "Official mark" means the official inspection legend or any other symbol prescribed by regulations of the Board to identify the status of any article or animal under this or the subsequent Article.

(20) "Pesticide chemical," "food additive," "color additive," and "raw agricultural commodity" shall have the same meanings for purposes of this Article as under the Federal Food, Drug, and Cosmetic Act.

(21) "Prepared" means slaughtered, canned, salted, smoked, rendered, boned, cut up, or otherwise manufactured or processed.

(22) "Renderer" means any person, firm, or corporation engaged in the business of rendering carcasses, or parts or products of the carcasses, of cattle, sheep, swine, goats, horses, mules, or other equines, except rendering conducted under inspection under this Article. (1969, c. 893, s. 1.)

§ 106-549.16. Statement of purpose. — Meat and meat food products are an important source of the nation's total supply of food. It is essential in the public interest that the health and welfare of consumers be protected by assuring that meat and meat food products distributed to them are wholesome, not adulterated, and properly marked, labeled, and packaged. Unwholesome, adulterated, or misbranded meat or meat food products are injurious to the public welfare, destroy markets for wholesome, not adulterated, and properly labeled and packaged meat and meat food products, and results in sundry losses to livestock producers and processors of meat and meat food products, as well as injury to consumers. The unwholesome, adulterated, mislabeled, or deceptively packaged articles can be sold at lower prices and compete unfairly with the wholesome, not adulterated, and properly labeled and packaged articles, to the detriment of consumers and the public generally. It is hereby found that regulation by the Board and cooperation by North Carolina and the United States as contemplated by this and the subsequent Article are appropriate to protect the health and welfare of consumers and otherwise effectuate the purposes of this and the subsequent Article. (1969, c. 893, s. 2; 1971, c. 54, s. 3.)

§ 106-549.17. Inspection before slaughter. — For the purpose of preventing the use in intrastate commerce, as hereinafter provided, of meat and meat food products which are adulterated, the Commissioner shall cause to be made, by inspectors appointed for that purpose, an examination and inspection of all cattle, sheep, swine, goats, horses, mules, and other equines before they shall be allowed to enter into any slaughtering, packing, meat-canning, rendering, or similar establishment in this State in which slaughtering and preparation of meat and meat food products of such animals are conducted for intrastate commerce; and all cattle, sheep, swine, goats, horses, mules, and other equines found on such inspection to show symptoms of disease shall be set apart and slaughtered separately from all other cattle, sheep, swine, goats, horses, mules, or other equines, and when so slaughtered, the carcasses of said cattle, sheep, swine, goats, horses, mules, or other equines shall be subject to a careful examination and inspection, all as provided by the rules and regulations to be prescribed by the Board as herein provided for. (1969, c. 893, s. 3.)

§ 106-549.18. Inspection; stamping carcass. — For the purposes hereinbefore set forth the Commissioner shall cause to be made by inspectors appointed for that purpose, as hereinafter provided, a post mortem examination and inspection of the carcasses and parts thereof of all cattle, sheep, swine, goats, horses, mules, and other equines, capable of use as human food, to be prepared at any slaughtering, meat-canning, salting, packing, rendering, or similar establishment in this State in which such articles are prepared for intrastate commerce; and the carcasses and parts thereof of all such animals found to be not adulterated shall be marked, stamped, tagged, or labeled, as "Inspected and Passed"; and said inspectors shall label, mark, stamp, or tax as "Inspected and Condemned," all carcasses and parts thereof of animals found to be adulterated; and all carcasses and parts thereof thus inspected and

condemned shall be destroyed for food purposes by the said establishment in the presence of an inspector, and the Commissioner or his authorized representative may remove inspectors from any such establishment which fails to so destroy any such condemned carcass or part thereof, and said inspectors, after said first inspection shall, when they deem it necessary, reinspect said carcasses or parts thereof to determine whether since the first inspection the same have become adulterated and if any carcass or any part thereof shall, upon examination and inspection subsequent to the first examination and inspection, be found to be adulterated, it shall be destroyed for food purposes by the said establishment in the presence of an inspector, and the Commissioner or his authorized representative may remove inspectors from any establishment which fails to [do] so destroy and such condemned carcass or part thereof. (1969, c. 893, s. 4.)

Editor's Note. — The word "do," which is enclosed in brackets in the section as set out above, appears in the 1969 act, but would seem to be superfluous.

§ 106-549.19. Application of Article; place of inspection. — The foregoing provisions shall apply to all carcasses or parts of carcasses of cattle, sheep, swine, goats, horses, mules, and other equines or the meat or meat products thereof, capable of use as human food, which may be brought into any slaughtering, meat-canning, salting, packing, rendering, or similar establishment, where inspection under this Article is maintained, and such examination and inspection shall be had before the said carcasses or parts thereof shall be allowed to enter into any department wherein the same are to be treated and prepared for meat food products; and the foregoing provisions shall also apply to all such products which, after having been issued from any such slaughtering, meat-canning, salting, packing, rendering, or similar establishment, shall be returned to the same or to any similar establishment where such inspection is maintained. The Commissioner or his authorized representative may limit the entry of carcasses, part of carcasses, meat and meat food products, and other materials into any establishment at which inspection under this Article is maintained, under such conditions as he may prescribe to assure that allowing the entry of such articles into such inspected establishments will be consistent with the purposes of this and the subsequent Article. (1969, c. 893, s. 5.)

§ 106-549.20. Inspectors' access to businesses. — For the purposes hereinbefore set forth the Commissioner or his authorized representative shall cause to be made by inspectors appointed for that purpose an examination and inspection of all meat food products prepared in any slaughtering, meat-canning, salting, packing, rendering, or similar establishment, where such articles are prepared for intrastate commerce and for the purposes of any examination and inspection said inspectors shall have access at all times during regular business hours to every part of said establishment; and said inspectors shall mark, stamp, tag, or label as "North Carolina Department of Agriculture Inspected and Passed" all such products found to be not adulterated; and said inspectors shall label, mark, stamp, or tag as "North Carolina Department of Agriculture Inspected and Condemned" all such products found adulterated, and all such condemned meat food products shall be destroyed for food purposes, as hereinbefore provided, and the Commissioner or his authorized representative may remove inspectors from any establishment which fails to so destroy such condemned meat food products. (1969, c. 893, s. 6.)

§ 106-549.21. Stamping container or covering; regulation of container. — (a) When any meat or meat food product prepared for intrastate commerce which has been inspected as hereinbefore provided and marked "North Carolina

Department of Agriculture Inspected and Passed" shall be placed or packed in any can, pot, tin, canvas, or other receptacle or covering in any establishment where inspection under the provisions of this Article is maintained, the person, firm, or corporation preparing said product shall cause a label to be attached to said can, pot, tin, canvas, or other receptacle or covering, under supervision of an inspector, which label shall state that the contents thereof have been "North Carolina Department of Agriculture Inspected and Passed" under the provisions of this Article, and no inspection and examination of meat or meat food products deposited or inclosed in cans, tins, pots, canvas, or other receptacle or covering in any establishment where inspection under the provisions of this Article is maintained shall be deemed to be complete until such meat or meat food products have been sealed or inclosed in said can, tin, pot, canvas, or other receptacle or covering under the supervision of an inspector.

(b) All carcasses, parts of carcasses, meat and meat food products inspected at any establishment under the authority of this Article and found to be not adulterated shall at the time they leave the establishment bear, in distinctly legible form, directly thereon or on their containers, as the Commissioner or authorized representative may require, the information required under subdivision (15) of G.S. 106-549.15.

(c) The Board whenever it determines such action is necessary for the protection of the public, may prescribe:

(1) The styles and sizes of type to be used with respect to material required to be incorporated in labeling to avoid false or misleading labeling of any articles or animals subject to this and the subsequent Article;

(2) Definitions and standards of identity or composition for articles subject to this Article and standards of fill of container for such articles not inconsistent with any such standards established under the Federal Food, Drug, and Cosmetic Act, or under the Federal Meat Inspection Act, and there shall be consultation between the Commissioner or his authorized representative and the Secretary of Agriculture of the United States prior to the issuance of such standards to avoid inconsistency between such standards and the federal standards.

(d) No article subject to this title shall be sold or offered for sale by any person, firm, or corporation, in intrastate commerce, under any name or other marking or labeling which is false or misleading, or in any container of a misleading form or size, but established trade names and other marking and labeling and containers which are not false or misleading, and which are approved by the Commissioner or his authorized representative, are permitted.

(e) If the Commissioner or his authorized representative has reason to believe that any marking or labeling or the size or form of any container in use or proposed for use with respect to any article subject to this title is false or misleading in any particular, he may direct that such use be withheld unless the marking, labeling, or container is modified in such manner as he may prescribe so that it will not be false or misleading. If the person, firm, or corporation using or proposing to use the marking, labeling or container does not accept the determination of the Commissioner or his authorized representative, such person, firm, or corporation may request a hearing, but the use of the marking, labeling, or container shall, if the Commissioner so directs, be withheld pending hearing and final determination by the Commissioner. Any such determination by the Commissioner shall be conclusive unless, within 30 days after receipt of notice of such final determination, the person, firm, or corporation adversely affected thereby appeals to the Superior Court of Wake County. Such appeal shall be under the provision of Chapter 150[A] of the General Statutes. (1969, c. 893, s. 7; 1973, c. 1331, s. 3.)

Editor's Note. — Pursuant to Session Laws 1973, c. 1331, s. 3, effective July 1, 1975, the reference to Chapter 150[A] has been substituted for a reference to Article 33 of Chapter 143 near the end of subsection (e).

§ 106-549.22. Rules and regulations of Board. — The Commissioner or his authorized representative shall cause to be made, by experts in sanitation, or by other competent inspectors, such inspection of all slaughtering, meat-canning, salting, packing, rendering, or similar establishments in which cattle, sheep, swine, goats, horses, mules, and other equines are slaughtered and the meat and meat food products thereof are prepared for intrastate commerce as may be necessary to inform himself concerning the sanitary conditions of the same, and the Board shall prescribe the rules and regulations of sanitation under which such establishments shall be maintained; and where the sanitary conditions of any such establishment are such that the meat or meat food products are rendered adulterated, the Commissioner or his authorized representative shall refuse to allow said meat or meat food products to be labeled, marked, stamped, or tagged as "North Carolina Department of Agriculture Inspected and Passed." (1969, c. 893, s. 8.)

Cross Reference. — As to agreements between county or district health departments and the Commissioner of Agriculture concerning inspection of establishments listed in this section, see § 130-17.1.

§ 106-549.23. Prohibited slaughter, sale, and transportation. — No person, firm, or corporation shall, with respect to any cattle, sheep, swine, goats, horses, mules, or other equines, or any carcasses, parts of carcasses, meat or meat food products of any such animals—

(1) Slaughter any such animals or prepare any such articles which are capable of use as human food, at any establishment preparing such articles for intrastate commerce, except in compliance with the requirements of this and the subsequent Article.

(2) Sell, transport, offer for sale or transportation, or receive for transportation, in intrastate commerce:

a. Any such articles which (i) are capable of use as human food, and (ii) are adulterated or misbranded at the time of such sale, transportation, offer for sale or transportation, or receipt for transportation; or,

b. Any articles required to be inspected under this Article unless they have been so inspected and passed, or

c. Do, with respect to any such articles which are capable of use as human food, any act while they are being transported in intrastate commerce or held for sale after such transportation, which is intended to cause or has the effect of causing such articles to be adulterated or misbranded. (1969, c. 893, s. 9.)

§ 106-549.24. Prohibited acts regarding certificate. — (a) No brand manufacturer, printer, or other person, firm, or corporation shall cast, print, lithograph, or otherwise make any device containing any official mark or simulation thereof, or any label bearing any such mark or simulation, or any form of official certificate or simulation thereof, except as authorized by the Commissioner or his authorized representative.

(b) No person, firm, or corporation shall

(1) Forge any official device, mark or certificate;

(2) Without authorization from the Commissioner or his authorized representative use any official device, mark, or certificate, or

simulation thereof, or alter, detach, deface, or destroy any official device, mark, or certificate;

(3) Contrary to the regulations prescribed by the Board, fail to use, or to detach, deface, or destroy any official device, mark, or certificate;

(4) Knowingly possess, without promptly notifying the Commissioner or his authorized representative, any official device or any counterfeit, simulated, forged, or improperly altered official certificate or any device or label or any carcass of any animal, or part or product thereof, bearing any counterfeit, simulated, forged, or improperly altered official mark;

(5) Knowingly make any false statement in any shipper's certificate or other nonofficial or official certificate provided for in the regulations prescribed by the Board;

(6) Knowingly represent that any article has been inspected and passed, or exempted, under this Article when, in fact, it has, respectively, not been so inspected and passed, or exempted. (1969, c. 893, s. 10.)

§ 106-549.25. Slaughter, sale and transportation of equine carcasses. — No person, firm, or corporation shall sell, transport, offer for sale or transportation, or receive for transportation, in intrastate commerce, any carcasses of horses, mules, or other equines or parts of such carcasses, or the meat or meat food products thereof, unless they are plainly and conspicuously marked or labeled or otherwise identified as required by regulations prescribed by the Board to show the kinds of animals from which they were derived. When required by the Commissioner or his authorized representative, with respect to establishments at which inspection is maintained under this Article, such animals and their carcasses, parts thereof, meat and meat food products shall be prepared in establishments separate from those in which cattle, sheep, swine, or goats are slaughtered or their carcasses, parts thereof, meats or meat food products are prepared. (1969, c. 893, s. 11.)

§ 106-549.26. Inspection of establishment; bribery of or malfeasance of inspector. — The Commissioner or his authorized representative shall appoint from time to time inspectors to make examination and inspection of all cattle, sheep, swine, goats, horses, mules, and other equines the inspection of which is hereby provided for, and of all carcasses and parts thereof, and of all meats and meat food products thereof, and of the sanitary conditions of all establishments in which such meat and meat food products hereinbefore described are prepared; and said inspectors shall refuse to stamp, mark, tag or label any carcass or any part thereof, or meat food product therefrom, prepared in any establishment hereinbefore mentioned, until the same shall have actually been inspected and found to be not adulterated; and shall perform such other duties as are provided by this and the subsequent Article and by the rules and regulations to be prescribed by said Board and said Board shall, from time to time, make such rules and regulations as are necessary for the efficient execution of the provisions of this and the subsequent Article, and all inspections and examinations made under this Article shall be such and made in such manner as described in the rules and regulations prescribed by said Board not inconsistent with the provisions of this Article and as directed by the Commissioner or his authorized representative. Any person, firm, or corporation, or any agent or employee of any person, firm, or corporation, who shall give, pay, or offer, directly or indirectly, to any inspector, or any other officer or employee of this State authorized to perform any of the duties prescribed by this and the subsequent Article or by the rules and regulations of the Board or by the Commissioner or his authorized representative any money or other thing of value, with intent to influence said inspector, or other officer or employee of this State in the discharge of any duty herein provided for, shall

be deemed guilty of a felony and, upon conviction thereof, shall be punished by a fine not less than five hundred dollars ($500.00) nor more than ten thousand dollars ($10,000) and by imprisonment for not less than one year nor more than three years; and any inspector, or other officer or employee of this State authorized to perform any of the duties prescribed by this Article who shall accept any money, gift, or other thing of value from any person, firm, or corporation, or officers, agents, or employees thereof, given with intent to influence his official action, or who shall receive or accept from any person, firm, or corporation engaged in intrastate commerce any gift, money, or other thing of value given with any purpose or intent whatsoever, shall be deemed guilty of a felony and shall, upon conviction thereof, be summarily discharged from office and shall be punished by a fine not less than five hundred dollars ($500.00) nor more than ten thousand dollars ($10,000) and by imprisonment for not less than one year nor more than three years. (1969, c. 893, s. 12.)

§ 106-549.27. Exemptions from Article. — (a) The provisions of this Article requiring inspection of the slaughter of animals and the preparation of the carcasses, parts thereof, meat and meat food products at establishments conducting such operations shall not

(1) Apply to the slaughtering by any person of animals of his own raising, and the preparation by him and transportation in intrastate commerce of the carcasses, parts thereof, meat and meat food products of such animals exclusively for use by him and members of his household and his nonpaying guests and employees; nor

(2) To the custom slaughter by any person, firm, or corporation of cattle, sheep, swine or goats delivered by the owner thereof for such slaughter, and the preparation by such slaughterer and transportation in intrastate commerce of the carcasses, parts thereof, meat and meat food products of such animals, exclusively for use, in the household of such owner, by him, and members of his household and his nonpaying guests and employees: Provided, that all carcasses, parts thereof, meat and meat food products derived from custom slaughter shall be identified as required by the Commissioner, during all phases of slaughtering, chilling, cooling, freezing, packing, meat canning, rendering, preparation, storage and transportation; provided further, that the custom slaughterer does not engage in the business of buying or selling any carcasses, parts thereof, meat or meat food products of any cattle, sheep, swine, goats or equines, capable of use as human food, unless the carcasses, parts thereof, meat or meat food products have been inspected and passed and are identified as having been inspected and passed by the Commissioner or the United States Department of Agriculture.

(b) The provisions of this Article requiring inspection of the slaughter of animals and the preparation of carcasses, parts thereof, meat and meat food products shall not apply to operations of types traditionally and usually conducted at retail stores and restaurants, when conducted at any retail store or restaurant or similar retail-type establishment for sale in normal retail quantities or service of such articles to consumers at such establishments. Meat food products coming under this subsection may be stored, processed, or prepared at any freezer locker plant provided such meat food products are identified and kept separate and apart from other meat food products bearing the official mark of inspection while in the freezer locker plant.

(c) In order to accomplish the objectives of this Article, the Commissioner shall exempt any other operations which the Commissioner shall determine would best be exempted to further the purposes of this Article, to the extent such exemptions conform to the Federal Meat Inspection Act and the regulations thereunder.

(d) The slaughter of animals and preparation of articles referred to in paragraphs (a) (2) and (b) of this section shall be conducted in accordance with such sanitary conditions as the Board may by regulations prescribe. Willful violation of any such regulation is a misdemeanor and punishable by a fine of not over five hundred dollars ($500.00) and imprisonment for not over six months or both fine and imprisonment.

(e) The adulteration and misbranding provisions of this title, other than the requirement of the inspection legend, shall apply to articles which are not required to be inspected under this section. (1969, c. 893, s. 13; 1971, c. 54, ss. 1, 2.)

§ 106-549.28. Regulation of storage of meat. — The Board may by regulations prescribe conditions under which carcasses, parts of carcasses, meat, and meat food products of cattle, sheep, swine, goats, horses, mules, or other equines, capable of use as human food, shall be stored or otherwise handled by any person, firm, or corporation engaged in the business of buying, selling, freezing, storing, or transporting, in or for intrastate commerce, such articles, whenever the Board deems such action necessary to assure that such articles will not be adulterated or misbranded when delivered to the consumer. Willful violation of any such regulation is a misdemeanor and punishable by a fine of not over five hundred dollars ($500.00) and imprisonment for not over six months or both fine and imprisonment. (1969, c. 893, s. 14.)

ARTICLE 49C.

Federal and State Cooperation as to Meat Inspection; Implementation of Inspection.

§ 106-549.29. North Carolina Department of Agriculture responsible for cooperation. — (a) The North Carolina Department of Agriculture is hereby designated as the State agency which shall be responsible for cooperating with the Secretary of Agriculture of the United States under the provisions of section 301 of the Federal Meat Inspection Act and such agency is directed to cooperate with the Secretary of Agriculture of the United States in developing and administering the meat inspection program of this State under this and the previous Article in such a manner as will effectuate the purposes of this and the previous Article.

(b) In such cooperative efforts, the North Carolina Department of Agriculture is authorized to accept from said Secretary advisory assistance in planning and otherwise developing the State program, technical and laboratory assistance and training (including necessary curricular and instructional materials and equipment), and financial and other aid for administration of such a program. The North Carolina Department of Agriculture is further authorized to spend public funds of this State appropriated for administration of this and the previous Article to pay fifty per centum (50%) of the estimated total cost of the cooperative program.

(c) The North Carolina Department of Agriculture is further authorized to recommend to the said Secretary of Agriculture such officials or employees of this State as the Commissioner shall designate, for appointment to the advisory committees provided for in section 301 of the Federal Meat Inspection Act; and the Commissioner or his authorized representative shall serve as the representative of the Governor for consultation with said Secretary under paragraph (c) of section 301 of said act. (1969, c. 893, s. 15.)

§ 106-549.29:1: Repealed by Session Laws 1969, c. 893, s. 26.

§ 106-549.30. Refusal of Commissioner to inspect and certify meat. — The Commissioner may (for such period, or indefinitely, as he deems necessary to effectuate the purposes of this and the previous Article) refuse to provide, or withdraw, inspection service under Article 49B with respect to any establishment if he determines, after opportunity for a hearing is accorded to the applicant for, or recipient of, such service, that such applicant or recipient is unfit to engage in any business requiring inspection under Article 49B because the applicant or recipient, or anyone responsibly connected with the applicant or recipient, has been convicted, in any federal or state court, of (i) any felony, or (ii) more than one violation of any law, other than a felony, based upon the acquiring, handling, or distributing of unwholesome, mislabeled, or deceptively packaged food or upon fraud in connection with transactions in food. This section shall not affect in any way other provisions of this or the previous Article for withdrawal of inspection services under Article 49B from establishments failing to maintain sanitary conditions or to destroy condemned carcasses, parts, meat or meat food products.

For the purpose of this section a person shall be deemed to be responsibly connected with the business if he was a partner, officer, director, holder, or owner of ten per centum (10%) or more of its voting stock or employee in a managerial or executive capacity. The determination and order of the Commissioner with respect thereto under this section shall be final and conclusive unless the affected applicant for, or recipient of, inspection service files application for judicial review within 30 days after the effective date of such order in the appropriate court as provided in G.S. 106-549.33. (1969, c. 893, s. 16.)

§ 106-549.31. Enforcement against uninspected meat. — Whenever any carcass, part of a carcass, meat or meat food product of cattle, sheep, swine, goats, horses, mules, or other equines, or any product exempted from the definition of a meat food product, or any dead, dying, disabled, or diseased cattle, sheep, swine, goat, or equine is found by any inspector of the Meat and Poultry Inspection Service of the North Carolina Department of Agriculture upon any premises where it is held for purposes of, or during or after distribution in intrastate commerce, and there is reason to believe that any such article is adulterated or misbranded and is capable of use as human food, or that it has not been inspected, in violation of the provisions of Article 49B or of the Federal Meat Inspection Act or the Federal Food, Drug and Cosmetic Act, or that such article or animal has been or is intended to be distributed in violation of any such provisions, it may be detained by such inspector, upon approval of his supervisor, for a period not to exceed 20 days, pending action under G.S. 106-549.33, and shall not be moved by any person, firm, or corporation from the place at which it is located when so detained, until released by the area supervisor of the Meat and Poultry Inspection Service. All official marks may be required by such inspector to be removed from such article or animal before it is released unless it appears to the satisfaction of the area supervisor that the article or animal is eligible to retain such marks. (1969, c. 893, s. 17.)

§ 106-549.32. Enforcement against condemned meat; appeal. — (a) Any carcass, part of a carcass, meat or meat food product of cattle, sheep, swine, goats, horses, mules or other equines, or any dead, dying, disabled, or diseased cattle, sheep, swine, goat, or equine, that is being transported in intrastate commerce, or is held for sale in this State after such transportation, and that (i) is or has been prepared, sold, transported or otherwise distributed or offered or received for distribution in violation of this or the previous Article, or (ii) is capable of use as human food and is adulterated or misbranded, or (iii) in any other way is in violation of this or the previous Article, shall be liable to be proceeded against and seized and condemned, at any time, on a complaint in any

proper court as provided in G.S. 106-549.33 within the jurisdiction of which the article or animal is found. If the article or animal is condemned it shall, after entry of the order be disposed of by destruction or sale as the court may direct and the proceeds, if sold, less the court costs and fees, and storage and other proper expenses, shall be paid into the general fund of this State, but the article or animals shall not be sold contrary to the provisions of this or the previous Article. Provided, that upon the execution and delivery of a good and sufficient bond conditioned that the article or animal shall not be sold or otherwise disposed of contrary to the provisions of this or the previous Article, the court may direct that such article or animal be delivered to the owner thereof subject to such supervision by the authorized representative of the Commissioner as is necessary to insure compliance with the applicable laws. When an order of condemnation is entered against the article or animal and it is released under bond, or destroyed, court costs and fees, and storage and other proper expenses shall be awarded against the person, if any, intervening as claimant of the article or animal. The proceedings in such cases shall be heard by the superior court without a jury, with the right of the aggrieved party to appeal to the Court of Appeals, and all such proceedings shall be at the suit of and in the name of this State. No appeal shall lie from the Court of Appeals.

(b) The provisions of this section shall in no way derogate from authority for condemnation or seizure conferred by other provisions of this or the previous Article, or other laws. (1969, c. 893, s. 18.)

§ 106-549.33. Jurisdiction of superior court. — The superior court is vested with jurisdiction specifically to enforce, and to prevent and restrain violations of this and the previous Article, and shall have jurisdiction in all other kinds of cases arising under this and the previous Article, provided however, all prosecutions for criminal violations under this and the previous Article shall be in any court having jurisdiction over said violation. (1969, c. 893, s. 19.)

§ 106-549.34. Interference with inspector. — Any person who willfully assaults, resists, opposes, impedes, intimidates, or interferes with any person while engaged in or on account of the performance of his official duties under this or the previous Article shall be guilty of a misdemeanor and fined not more than five hundred dollars ($500.00) or imprisoned for not more than six months or both fined and imprisoned. For the purposes of this section, "impede," "oppose," and "intimidate," or "interfere" shall include, but not be limited to, the use of profane and indecent language, or any act or gesture, verbal or nonverbal, which tends to cast disrespect on an inspector or the Meat and Poultry Inspection Service. Whoever, in the commission of any such acts, uses a deadly weapon, shall be fined not less than two hundred fifty dollars ($250.00) or not more than one thousand dollars ($1,000) or imprisoned not less than one year or not more than two years, or both. (1969, c. 893, s. 20.)

§ 106-549.35. Punishment for violation. — (a) Any person, firm, or corporation who violates any provision of this or the previous Article or any regulation of the Board for which no other criminal penalty is provided by this or the previous Article shall upon conviction be subject to imprisonment for not more than six months, or a fine of not more than five hundred dollars ($500.00), or both such imprisonment and fine; but if such violation involves intent to defraud, or any distribution or attempted distribution of an article that is adulterated (except as defined in G.S. 106-549.15(1)h, such person, firm or corporation shall be subject to imprisonment for not more than three years or a fine of not more than ten thousand dollars ($10,000) or both: Provided, that no person, firm, or corporation shall be subject to penalties under this section for receiving for transportation any article or animal in violation of this or the previous Article if such receipt was made in good faith, unless such person, firm, or corporation refuses to furnish on request of a representative of the Meat and

Poultry Inspection Service the name and address of the person from whom he received such article or animal, and copies of all documents, if any there be, pertaining to the delivery of the article or animal to him.

(b) Nothing in this Article shall be construed as requiring the Commissioner or his authorized representative to report for prosecution or for the institution of condemnation or injunction proceedings, minor violations of this Article whenever he believes that the public interest will be adequately served by a suitable written notice of warning. (1969, c. 893, s. 21.)

§ 106-549.36. Gathering information; reports required; use of subpoena. — (a) The Commissioner shall also have power—

(1) To gather and compile information concerning and, to investigate from time to time the organization, business, conduct, practices, and management of any person, firm, or corporation engaged in intrastate commerce, and the relation thereof to other persons, firms, or corporations;

(2) To require, by general or special orders, persons, firms, and corporations engaged in intrastate commerce, or any class of them, or any of them to file with the Commissioner, in such form as the Commissioner may prescribe, annual or special, or both annual and special, reports or answers in writing to specific questions, furnishing to the Commissioner such information as he may require as to the organization, business, conduct, practices, management, and relation to other persons, firms, and corporations, of the person, firm, or corporation filing such reports or answers in writing. Such reports and answers shall be made under oath, or otherwise, as the Commissioner may prescribe, and shall be filed with the Commissioner within such reasonable period as the Commissioner may prescribe, unless additional time be granted in any case by the Commissioner.

(b) For the purposes of this and the previous Article the Commissioner shall at all reasonable times have access to, for the purpose of examination, and the right to copy any documentary evidence of any person, firm, or corporation being investigated or proceeded against, and may require by subpoena the attendance and testimony of witnesses and the production of all documentary evidence of any person, firm, or corporation relating to any matter under investigation. The Commissioner may sign subpoenas and may administer oaths and affirmations, examine witnesses, and receive evidence.

(1) Such attendance of witnesses, and the production of such documentary evidence, may be required at any designated place of hearing. In case of disobedience to a subpoena the Commissioner may invoke the aid of any court designated in G.S. 106-549.33 in requiring the attendance and testimony of witnesses and the production of documentary evidence.

(2) Any of the courts designated in G.S. 106-549.33 within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any person, firm, or corporation, issue an order requiring such person, firm, or corporation, to appear before the Commissioner or to produce documentary evidence if so ordered, or to give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(3) Upon the application of the Attorney General of this State at the request of the Commissioner, the superior court shall have jurisdiction to issue writs of mandamus commanding any person, firm, or corporation to comply with the provisions of this or the previous Article or any order of the Commissioner made in pursuance thereof.

(4) The Commissioner may order testimony to be taken by deposition in any proceeding or investigation pending under this Article at any stage of

such proceeding or investigation. Such depositions may be taken before any person designated by the Commissioner and having power to administer oaths. Such testimony shall be reduced to writing by the person taking the deposition, or under his direction and shall then be subscribed by the deponent. Any person may be compelled to appear and depose and to produce documentary evidence in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the Commissioner as hereinbefore provided.

(5) Witnesses summoned before the Commissioner shall be paid the same fees and mileage that are paid witnesses in the courts of this State, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in such courts.

(6) No person, firm, or corporation shall be excused from attending and testifying or from producing books, papers, schedules of charges, contracts, agreements, or other documentary evidence before the Commissioner or in obedience to the subpoena of the Commissioner whether such subpoena be signed or issued by him or his delegate, or in any cause or proceedings, criminal or otherwise, based upon or growing out of any alleged violation of this or the previous Article, or of any amendments thereto, on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him or it may tend to incriminate him or it or subject him or it to a penalty or forfeiture; but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that any person so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

(c) Any person, firm, or corporation that shall neglect or refuse to attend and testify or to answer any lawful inquiry, or to produce documentary evidence, if in his or its power to do so, in obedience to the subpoena or lawful requirement of the Commissioner shall be guilty of a misdemeanor and upon conviction thereof by a court of competent jurisdiction shall be punished by a fine of not more than five hundred dollars ($500.00) or by imprisonment for not more than six months or by both such fine and imprisonment.

(1) Any person, firm, or corporation that shall willfully make, or cause to be made, any false entry or statement of fact in any report required to be made under this Article, or that shall willfully make, or cause to be made, any false entry in any account, record, or memorandum kept by any person, firm, or corporation subject to this Article or that shall willfully neglect or fail to make, or to cause to be made, full, true, and correct entries in such accounts, records, or memoranda, of all facts and transactions appertaining to the business of such person, firm, or corporation, or that shall willfully remove out of the jurisdiction of this State, or willfully mutilate, alter, or by any other means falsify any documentary evidence of any such person, firm, or corporation or that shall willfully refuse to submit to the Commissioner or to any of his authorized agents, for the purpose of inspection and taking copies, any documentary evidence of any such person, firm, or corporation in his possession or within his control, shall be deemed guilty of an offense and shall be subject, upon conviction in any court of competent jurisdiction to a fine of not more than five hundred dollars ($500.00) or

to imprisonment for a term of not more than six months or to both such fine and imprisonment.

(2) If any person, firm, or corporation required by this Article to file any annual or special report shall fail so to do within the time fixed by the Commissioner for filing the same, and such failure shall continue for 30 days after notice of such default, such person, firm, or corporation shall forfeit to this State the sum of one hundred dollars ($100.00) for each and every day of the continuance of such failure, which forfeiture shall be payable into the general fund of this State, and shall be recoverable in a civil suit in the name of the State brought in the superior court where the person, firm, or corporation has his or its principal office or in Wake County. It shall be the duty of the Attorney General of this State, to prosecute for the recovery of such forfeitures. The costs and expenses of such prosecution shall be paid out of the amount recovered in such action.

(3) Any officer or employee of this State who shall make public any information obtained by the Commissioner without his authority, unless directed by a court, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding five hundred dollars ($500.00) or by imprisonment, not exceeding six months or by both such fine and imprisonment, in the discretion of the court. (1969, c. 893, s. 22.)

§ 106-549.37. Jurisdiction coterminous with federal law. — The requirements of this Article shall apply to persons, firms, corporation establishments, animals, and articles regulated under the Federal Meat Inspection Act only to the extent provided for in section 408 of said federal act. (1969, c. 893, s. 23.)

§ 106-549.38. Rules and regulations of State Department of Agriculture. — All rules and regulations of the North Carolina Department of Agriculture not inconsistent with the provisions of this Article shall remain in full force and effect until amended or repealed by the Board. (1969, c. 893, s. 27.)

§ 106-549.39. Hours of inspection; overtime work; fees. — The Commissioner, or his agents, shall not be required to furnish meat inspection, as herein provided, for more than eight hours in any one day, or in excess of 40 hours in any one calendar week or on Sundays or legal holidays except on payment to the Department by the operator of an establishment under inspection of an hourly fee for each hour of State meat inspection furnished over eight hours in any one day or in excess of 40 hours in any calendar week or on Sundays and legal holidays. The Commissioner shall establish an hourly rate for such overtime at an amount sufficient to defray the cost of such inspection.

All fees received by the Department under this section shall be deposited in the general fund in the State treasury, credited to the Department of Agriculture account, and continuously appropriated to the Department for the purpose of administration and enforcement of this and the previous Article. (1969, c. 893, s. 27(a).)

§§ 106-549.40 to 106-549.48: Repealed by Session Laws 1969, c. 893, s. 26.

ARTICLE 49D.

Poultry Products Inspection Act.

§ 106-549.49. Short title. — This Article shall be designated as the North Carolina Poultry Products Inspection Act. (1971, c. 677, s. 1.)

§ 106-549.50. Purpose and policy. — (a) Poultry and poultry products are an important source of the nation's total supply of food. It is essential in the public interest that the health and welfare of consumers be protected by assuring that slaughtered poultry and poultry products distributed to them are wholesome, not adulterated, and properly marked, labeled, and packaged. Unwholesome, adulterated, or misbranded poultry or poultry products are injurious to the public welfare, destroy markets for wholesome, not adulterated, and properly labeled and packaged poultry and poultry products, and result in sundry losses to poultry producers and processors of poultry and poultry products, as well as injury to consumers. The unwholesome, adulterated, mislabeled, or deceptively packaged articles can be sold at lower prices and compete unfairly with the wholesome, not adulterated, and properly labeled and packaged articles, to the detriment of consumers and the public generally. It is hereby found that regulation by the Board and cooperation by this State and the United States as contemplated by this Article are appropriate to protect the health and welfare of consumers and otherwise effectuate the purposes of this Article.

(b) It is hereby declared to be the policy of the General Assembly to provide for the inspection of poultry and poultry products and otherwise regulate the processing and distribution of such articles as hereinafter prescribed to prevent the movement or sale in intrastate commerce of poultry and poultry products which are adulterated or misbranded. It is the intent of the General Assembly that when poultry and poultry products are condemned because of disease, the reason for condemnation in such instances shall be supported by scientific fact, information, or criteria, and such condemnation under this Article shall be achieved through uniform inspection standards and uniform application thereof. (1971, c. 677, ss. 2, 3.)

§ 106-549.51. Definitions. — For purposes of this Article, the following terms shall have the meanings stated below:

(1) "Adulterated" shall apply to any poultry product under one or more of the following circumstances:

a. If it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance, such article shall not be considered adulterated under this clause if the quantity of such substance in or on such article does not ordinarily render it injurious to health;

b. 1. If it bears or contains (by reason of administration of any substance to the live poultry or otherwise) any added poisonous or added deleterious substance (other than one which is a pesticide chemical in or on a raw agricultural commodity; a food additive; or a color additive) which may, in the judgment of the Commissioner, make such article unfit for human food;

2. If it is, in whole or in part, a raw agricultural commodity and such commodity bears or contains a pesticide chemical which is unsafe within the meaning of section 408 of the Federal Food, Drug, and Cosmetic Act;

3. If it bears or contains any food additive which is unsafe within the meaning of section 409 of the Federal Food, Drug, and Cosmetic Act;

4. If it bears or contains any color additive which is unsafe within the meaning of section 706 of the Federal Food, Drug, and Cosmetic Act: Provided, that an article which is not otherwise deemed adulterated under paragraphs 2, 3, or 4 shall nevertheless be deemed adulterated if use of the pesticide chemical, food additive, or color additive in or on such article

is prohibited by regulations of the Board in official establishments;

c. If it consists in whole or in part of any filthy, putrid, or decomposed substance or is for any other reason unsound, unhealthful, unwholesome, or otherwise unfit for human food;

d. If it has been prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health;

e. If it is, in whole or in part, the product of any poultry which has died otherwise than by slaughter;

f. If its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health;

g. If it has been intentionally subjected to radiation, unless the use of the radiation was in conformity with a regulation or exemption in effect pursuant to section 409 of the Federal Food, Drug, and Cosmetic Act; or

h. If any valuable constituent has been in whole or in part omitted or abstracted therefrom; or if any substance has been substituted, wholly or in part therefor; or if damage or inferiority has been concealed in any manner; or if any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength, or make it appear better or of greater value than it is.

(2) "Animal food manufacturer" means any person engaged in the business of manufacturing or processing animal food derived wholly or in part from carcasses, or parts or products of the carcasses, of poultry.

(3) "Board" means the North Carolina Board of Agriculture.

(4) "Capable of use as human food" shall apply to any carcass, or part or product of a carcass, of any poultry, unless it is denatured or otherwise identified as required by regulations prescribed by the Board to deter its use as human food, or it is naturally inedible by humans.

(5) "Color additive" shall have the same meaning for purposes of this Article as under the Federal Food, Drug, and Cosmetic Act.

(6) "Commissioner" means the North Carolina Commissioner of Agriculture or his authorized representative.

(7) "Container" or "package" includes any box, can, tin, cloth, plastic, or other receptacle, wrapper, or cover.

(8) "Federal Food, Drug, and Cosmetic Act" means the act so entitled, approved June 25, 1938 (52 Stat. 1040), and acts amendatory thereof or supplementary thereto.

(9) "Federal Poultry Products Inspection Act" means the act so entitled approved August 28, 1957 (71 Stat. 441), as amended by the Wholesome Poultry Products Act (82 Stat. 791).

(10) "Food additive" shall have the same meaning for purposes of this Article as under the Federal Food, Drug, and Cosmetic Act.

(11) "Immediate container" includes any consumer package; or any other container in which poultry products, not consumer packaged, are packed.

(12) "Inspection service" means the official government service within this State Department of Agriculture designated by the Commissioner as having the responsibility for carrying out the provisions of this Article.

(13) "Inspector" means an employee or official of the State Department of Agriculture authorized by the Commissioner to inspect poultry and poultry products under the authority of this Article, or any employee or official of the government of any county or other governmental

subdivision of this State authorized by the Commissioner to inspect poultry and poultry products under authority of this Article, under an agreement entered into between the Department of Agriculture and such governmental subdivision.

(14) "Intrastate commerce" means commerce within this State.

(15) "Label" means a display of written, printed, or graphic matter upon any article or the immediate container (not including package liners) of any article.

(16) "Labeling" means all labels and other written, printed, or graphic matter

a. Upon any article or any of its containers or wrappers, or

b. Accompanying such article.

(17) "Misbranded" shall apply to any poultry product under one or more of the following circumstances:

a. If its labeling is false or misleading in any particular;

b. If it is offered for sale under the name of another food;

c. If it is an imitation of another food, unless its label bears, in type of uniform size and prominence, the word "imitation" and immediately thereafter, the name of the food imitated;

d. If its container is so made, formed, or filled as to be misleading;

e. Unless it bears a label showing

1. The name and place of business of the manufacturer, packer, or distributor; and

2. An accurate statement of the quantity of the product in terms of weight, measure, or numerical count;

Provided, that under paragraph 2 of this subsubdivision e, reasonable variations may be permitted, and exemptions as to small packages or articles not in packages or other containers may be established, by regulations prescribed by the Board;

f. If any word, statement, or other information required by or under authority of this Article to appear on the label or other labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

g. If it purports to be or is represented as a food for which a definition and standard of identity or composition has been prescribed by regulations of the Board under G.S. 106-549.55 unless

1. It conforms to such definition and standard, and

2. Its label bears the name of the food specified in the definition and standard and, insofar as may be required by such regulations, the common names of optional ingredients (other than spices, flavoring, and coloring) present in such food;

h. If it purports to be or is represented as a food for which a standard or standards of fill of container have been prescribed by regulations of the Board under G.S. 106-549.55, and it falls below the standard of fill of container applicable thereto, unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard;

i. If it is not subject to the provisions of subsubdivision g, unless its label bears

1. The common or usual name of the food, if any there be, and

2. In case it is fabricated from two or more ingredients, the common or usual name of each such ingredient; except that spices, flavorings, and colorings may, when authorized by the

Commissioner be designated as spices, flavorings, and colorings without naming each: Provided, that, to the extent that compliance with the requirements of clause 2 of this subsubdivision i is impracticable, or results in deception or unfair competition, exemptions shall be established by regulations promulgated by the Board;

j. If it purports to be or is represented for special dietary uses, unless its label bears such information concerning its vitamin, mineral, and other dietary properties as the Board, after consultation with the Secretary of Agriculture of the United States, determines to be, and by regulations prescribes as, necessary in order fully to inform purchasers as to its value for such uses;

k. If it bears or contains any artificial flavoring, artificial coloring, or chemical preservative, unless it bears labeling stating that fact: Provided, that, to the extent that compliance with the requirements of this subsubdivision k is impracticable, exemptions shall be established by regulations promulgated by the Board; or

l. If it fails to bear on its containers, and in the case of nonconsumer packaged carcasses (if the Commissioner so requires) directly thereon, as the Board may by regulations prescribe, the official inspection legend and official establishment number of the establishment where the article was processed, and, unrestricted by any of the foregoing, such other information as the Board may require in such regulations to assure that it will not have false or misleading labeling and that the public will be informed of the manner of handling required to maintain the article in a wholesome condition.

(18) "Official certificate" means any certificate prescribed by regulation of the Board for issuance by an inspector or other person performing official functions under this Article.

(19) "Official device" means any device prescribed or authorized by the Board for use in applying any official mark.

(20) "Official establishment" means any establishment as determined by the Commissioner at which inspection of the slaughter of poultry, or the processing of poultry products, is maintained under the authority of this Article.

(21) "Official inspection legend" means any symbol prescribed by regulation of the Board showing that an article was inspected for wholesomeness in accordance with this Article.

(22) "Official mark" means the official inspection legend or any other symbol prescribed by regulation of the Board to identify the status of any article or poultry under this Article.

(23) "Person" means any individual, partnership, corporation, association, or other business entity.

(24) "Pesticide chemical" shall have the same meaning for purposes of this Article as under the Federal Food, Drug, and Cosmetic Act.

(25) "Poultry" means any domesticated bird, whether live or dead.

(26) "Poultry product" means any poultry carcass, or part thereof; or any product which is made wholly or in part from any poultry carcass or part thereof, excepting products which contain poultry ingredients only in a relatively small proportion or historically have not been considered by consumers as products of the poultry food industry, and which are exempted by the Board from definition as a poultry product under such conditions as the Board may prescribe to assure that the poultry ingredients in such products are not adulterated and that such products are not represented as poultry products.

(27) "Poultry products broker" means any person engaged in the business of buying or selling poultry products on commission, or otherwise negotiating purchases or sales of such articles other than for his own account or as an employee of another person.
(28) "Processed" means slaughtered, canned, salted, stuffed, rendered, boned, cut up, or otherwise manufactured or processed.
(29) "Raw agricultural commodity" shall have the same meaning for purposes of this Article as under the Federal Food, Drug, and Cosmetic Act.
(30) "Renderer" means any person engaged in the business of rendering carcasses, or parts or products of the carcasses, or poultry, except rendering conducted under inspection or exemption under this Article.
(31) "Shipping container" means any container used or intended for use in packaging the product packed in an immediate container. (1971, c. 677, s. 4.)

§ 106-549.51A. Article applicable to domesticated rabbits. — The provisions of this Article shall apply to domesticated rabbits. (1971, c. 677, s. 25.)

§ 106-549.52. State and federal cooperation. — (a) The Department of Agriculture is hereby designated as the State agency which shall be responsible for cooperating with the Secretary of Agriculture of the United States under the provisions of section 5 of the Federal Poultry Products Inspection Act and such agency is directed to cooperate with the Secretary of Agriculture of the United States in developing and administering the poultry products inspection program of this State under this Article and in developing and administering the program of this State under G.S. 106-549.58 in such a manner as will effectuate the purposes of this Article and said federal act.

(b) In such cooperative efforts, the Department of Agriculture is authorized to accept from said Secretary advisory assistance in planning and otherwise developing the State program, technical and laboratory assistance and training (including necessary curricular and instructional materials and equipment), and financial and other aid for administration of such a program. The Department of Agriculture is further authorized to spend public funds of this State appropriated for administration of this Article to pay fifty percent (50%) of the estimated total cost of the cooperative program as may be agreed upon by the Department of Agriculture and the U.S. Secretary of Agriculture.

(c) The Department of Agriculture is further authorized to recommend to the Secretary of Agriculture such officials or employees of this State as the Commissioner shall designate, for appointment to the advisory committees provided for in section 5 of the Federal Poultry Products Inspection Act; and the Commissioner shall serve as the representative of the Governor for consultation with said Secretary under subsection (c) of section 5 of said act. (1971, c. 677, s. 5.)

§ 106-549.53. Inspection; condemnation of adulterated poultry. — (a) For the purpose of preventing the entry into or flow or movement in intrastate commerce of any poultry product which is capable of use as human food and is adulterated, the Commissioner shall, where and to the extent considered by him necessary, cause to be made by inspectors antemortem inspection of poultry in each official establishment engaged in processing poultry or poultry products solely for intrastate commerce.

(b) The Commissioner, whenever processing operations are being conducted, shall cause to be made by inspectors postmortem inspection of the carcass of each bird processed, and at any time such quarantine, segregation and reinspection as he deems necessary of poultry and poultry products capable of use as human food in each official establishment engaged in processing such poultry or poultry products solely for intrastate commerce.

(c) All poultry carcasses and parts thereof and other poultry products found to be adulterated shall be condemned and shall, if no appeal be taken from such determination of condemnation, be destroyed for human food purposes under the supervision of an inspector: Provided, that carcasses, parts, and products, which may by reprocessing be made not adulterated, need not be so condemned and destroyed if so reprocessed under the supervision of an inspector and thereafter found to be not adulterated. If an appeal be taken from such determination, the carcasses, parts, or products shall be appropriately marked and segregated pending completion of an appeal inspection, which appeal shall be at the cost of the appellant if the Commissioner determines that the appeal is frivolous. If the determination of condemnation is sustained the carcasses, parts, and products shall be destroyed for food purposes under the supervision of an inspector. (1971, c. 677, s. 6.)

§ 106-549.54. Sanitation of premises; regulations. — (a) Each official establishment slaughtering poultry or processing poultry products solely for intrastate commerce shall have such premises, facilities, and equipment, and be operated in accordance with such sanitary practices, as are required by regulations promulgated by the Board for the purpose of preventing the entry into or flow or movement in intrastate commerce of poultry products which are adulterated.

(b) The Commissioner shall refuse to render inspection to any establishment whose premises, facilities, or equipment, or the operation thereof, fail to meet the requirements of this section. (1971, c. 677, s. 7.)

§ 106-549.55. Labeling standards; false and misleading labels. — (a) All poultry products inspected at any official establishment under the authority of this Article and found to be not adulterated, shall at the time they leave the establishment bear, in distinctly legible form, on their shipping containers and immediate containers as the Commissioner may require, the information required under subdivision (1) of G.S. 106-549.51. In addition, the Commissioner whenever he determines such action is practicable and necessary for the protection of the public, may require nonconsumer packaged carcasses at the time they leave the establishment to bear directly thereon in distinctly legible form any information required under such subdivision (1).

(b) The Board, whenever it determines such action is necessary for the protection of the public, may prescribe:

(1) The styles and sizes of type to be used with respect to material required to be incorporated in labeling to avoid false or misleading labeling in marking or otherwise labeling any articles or poultry subject to this Article;

(2) Definitions and standards of identity or composition for articles subject to this Article and standards of fill of container for such articles not inconsistent with any such standards established under the Federal Food, Drug and Cosmetic Act, or under the Federal Poultry Products Inspection Act, and there shall be consultation between the Commissioner or his authorized representative and the Secretary of Agriculture of the United States prior to the issuance of such standards to avoid inconsistency between such standards and the federal standards.

(c) No article subject to this Article shall be sold or offered for sale by any person in intrastate commerce, under any name or other marking or labeling which is false or misleading, or in any container of a misleading form or size, but established trade names and other marking and labeling and containers which are not false or misleading and which are approved by the Commissioner, are permitted.

(d) If the Commissioner has reason to believe that any marking or labeling or the size or form of any container in use or proposed for use with respect to any article subject to this Article is false or misleading in any particular, he may direct that such use be withheld unless the marking, labeling, or container is modified in such manner as he may prescribe so that it will not be false or misleading. If the person using or proposing to use the marking, labeling or container does not accept the determination of the Commissioner, such person may request a hearing, but the use of the marking, labeling, or container shall, if the Commissioner so directs, be withheld pending hearing and final determination by the Commissioner. Any such determination by the Commissioner shall be conclusive unless, within 30 days after receipt of notice of such final determination, the person adversely affected thereby appeals to the Superior Court of Wake County under the provisions of Chapter 150[A] of the General Statutes. (1971, c. 677, s. 8; 1973, c. 1331, s. 3.)

Editor's Note. — The reference to subdivision (1) of § 106-549.51 in subsection (a) appears to be an error. A reference to subdivision (17) may have been intended.

Pursuant to Session Laws 1973, c. 1331, s. 3, effective July 1, 1975, the reference to Chapter 150[A] has been substituted for a reference to Article 33 of Chapter 143 near the end of subsection (d).

§ 106-549.56. Prohibited acts. — (a) No person shall:

(1) Slaughter any poultry or process any poultry products which are capable of use as human food at any establishment processing any such articles solely for intrastate commerce, except in compliance with the requirements of this Article;

(2) Sell, transport, offer for sale or transportation, or receive for transportation, in intrastate commerce,

a. Any poultry products which are capable of use as human food and are adulterated or misbranded at the time of such sale, transportation, offer for sale or transportation, or receipt for transportation; or

b. Any poultry products required to be inspected under this Article unless they have been so inspected and passed;

(3) Do, with respect to any poultry products which are capable of use as human food, any act while they are being transported in intrastate commerce or held for sale after such transportation, which is intended to cause or has the effect of causing such products to be adulterated or misbranded;

(4) Sell, transport, offer for sale or transportation, or receive for transportation, in intrastate commerce or from an official establishment, any slaughtered poultry from which the blood, feathers, feet, head, or viscera have not been removed in accordance with regulations promulgated by the Board, except as may be authorized by regulations of the Board;

(5) Use to his own advantage, or reveal other than to the authorized representatives of the State government or any other government in their official capacity, or as ordered by a court in any judicial proceedings, any information acquired under the authority of this Article concerning any matter which is entitled to protection as a trade secret.

(b) No brand manufacturer, printer, or other person shall cast, print, lithograph, or otherwise make any device containing any official mark or simulation thereof, or any label bearing any such mark or simulation, or any form of official certificate or simulation thereof, except as authorized by the Commissioner.

(c) No person shall:

(1) Forge any official device, mark or certificate;

(2) Without authorization from the Commissioner use any official device, mark, or certificate, or simulation thereof, or alter, detach, deface, or destroy any official device, mark, or certificate;

(3) Contrary to the regulations prescribed by the Board, fail to use, or to detach, deface, or destroy any official device, mark, or certificate;

(4) Knowingly possess, without promptly notifying the Commissioner, any official device or any counterfeit, simulated, forged, or improperly altered official certificate or any device or label or any carcass of any poultry, or part or product thereof, bearing any counterfeit, simulated, forged, or improperly altered official mark;

(5) Knowingly make any false statement in any shipper's certificate or other nonofficial or official certificate provided for in the regulations prescribed by the Board; or

(6) Knowingly represent that any article has been inspected and passed, or exempted, under this Article when, in fact, it has, respectively, not been so inspected and passed, or exempted. (1971, c. 677, s. 9.)

§ 106-549.57. No poultry in violation of Article processed. — No establishment processing poultry or poultry products solely for intrastate commerce shall process any poultry or poultry product capable of use as human food except in compliance with the requirements of this Article. (1971, c. 677, s. 10.)

§ 106-549.58. Poultry not for human consumption; records; registration. — (a) Inspection shall not be provided under this Article at any establishment for the slaughter of poultry or the processing of any carcasses or parts or products of poultry, which are not intended for use as human food, but such articles shall, prior to their offer for sale or transportation in intrastate commerce, unless naturally inedible by humans, be denatured or otherwise identified as prescribed by regulations of the Board to deter their use for human food. No person shall buy, sell, transport, or offer for sale or transportation, or receive for transportation, in intrastate commerce, any poultry carcasses or parts or products thereof which are not intended for use as human food unless they are denatured or otherwise identified as required by the regulations of the Board or are naturally inedible by humans.

(b) The following classes of persons shall, for such period of time as the Board may by regulations prescribe, not to exceed two years unless otherwise directed by the Commissioner for good cause shown, keep such records as are properly necessary for the effective enforcement of this Article in order to insure against adulterated or misbranded poultry products for the American consumer; and all persons subject to such requirements shall, at all reasonable times, upon notice by a duly authorized representative of the Department of Agriculture, afford such representative access to their places of business and opportunity to examine the facilities, inventory, and records thereof, to copy all such records, and to take reasonable samples of their inventory upon payment of the fair market value therefor:

(1) Any person that engages in the business of slaughtering any poultry or processing, freezing, packaging, or labeling any carcasses, or parts or products of carcasses, of any poultry, for intrastate commerce, for use as human food or animal food;

(2) Any person that engages in the business of buying or selling (as poultry products brokers; wholesalers or otherwise), or transporting, in intrastate commerce, or storing in or for intrastate commerce, any carcasses, or parts or products of carcasses, of any poultry;

(3) Any person that engages in business, in or for intrastate commerce, as a renderer, or engages in the business of buying, selling, or transporting, in intrastate commerce, any dead, dying, disabled, or diseased poultry or parts of the carcasses of any poultry that died otherwise than by slaughter.

(c) No person shall engage in business, in or for intrastate commerce, as a poultry products broker, renderer, or animal food manufacturer, or engage in business in intrastate commerce as a wholesaler of any carcasses, or parts or products of the carcasses, of any poultry, whether intended for human food or other purposes, or engage in business as a public warehouseman storing any such articles in or for intrastate commerce, or engage in the business of buying, selling, or transporting in intrastate commerce any dead, dying, disabled, or diseased poultry, or parts of the carcasses of any poultry that died otherwise than by slaughter, unless, when required by regulations of the Board, he has registered with the Commissioner his name, and the address of each place of business at which, and all trade names under which, he conducts such business.

(d) No person engaged in the business of buying, selling, or transporting in intrastate commerce, dead, dying, disabled, or diseased poultry, or any parts of the carcasses of any poultry that died otherwise than by slaughter, shall buy, sell, transport, offer for sale or transportation, or receive for transportation in intrastate commerce, any dead, dying, disabled, or diseased poultry or parts of the carcasses of any poultry that died otherwise than by slaughter, unless such transaction or transportation is made in accordance with such regulations as the Board may prescribe to assure that such poultry, or the unwholesome parts or products thereof, will be prevented from being used for human food. (1971, c. 677, s. 11.)

§ 106-549.59. Punishment for violations; carriers exempt; interference with enforcement. — (a) Any person who violates the provisions of G.S. 106-549.56, 106-549.57, 106-549.58 or 106-549.61 shall be fined not more than one thousand dollars ($1,000) or imprisoned not more than one year, or both; but if such violation involves intent to defraud, or any distribution or attempted distribution of an article that is adulterated (except as defined in G.S. 106-549.51(1)h), such person shall be fined not more than ten thousand dollars ($10,000) or imprisoned not more than three years or both. When construing or enforcing the provisions of said sections the act, omission, or failure of any person acting for or employed by any individual, partnership, corporation, or association within the scope of his employment or office shall in every case be deemed the act, omission, or failure of such individual, partnership, corporation, or association, as well as of such person.

(b) No carrier shall be subject to the penalties of this Article, other than the penalties for violation of G.S. 106-549.58, by reason of his receipt, carriage, holding, or delivery, in the usual course of business, as a carrier, of poultry or poultry products, owned by another person unless the carrier has knowledge, or is in possession of facts which would cause a reasonable person to believe that such poultry or poultry products were not inspected or marked in accordance with the provisions of this Article or were otherwise not eligible for transportation under this Article or unless the carrier refuses to furnish on request of a representative of the Department of Agriculture the name and address of the person from whom he received such poultry or poultry products, and copies of all documents, if any there be, pertaining to the delivery of the poultry or poultry products to such carrier.

(c) Any person who forcibly assaults, resists, opposes, impedes, intimidates, or interferes with any person while engaged in or on account of the performance of his official duties under this Article shall be fined not more than five thousand dollars ($5,000) or imprisoned not more than three years, or both. Whoever, in the commission of any such acts, uses a deadly or dangerous weapon, shall be

fined not more than ten thousand dollars ($10,000) or imprisoned not more than 10 years, or both. (1971, c. 677, s. 12.)

§ 106-549.60. Notice of violation. — Before any violation of this Article is reported by the Commissioner to any North Carolina district attorney for institution of a criminal proceeding, the person against whom such proceeding is contemplated shall be given reasonable notice of the alleged violation and opportunity to present his views orally or in writing with regard to such contemplated proceeding. Nothing in this Article shall be construed as requiring the Commissioner or his authorized representative to report for criminal prosecution of this Article whenever he believes that the public interest will be adequately served and compliance with the Article obtained by a suitable written notice or warning. (1971, c. 677, s. 13; 1973, c. 47, s. 2.)

Editor's Note. — The 1973 amendment substituted "district attorney" for "solicitor" near the beginning of the first sentence.

§ 106-549.61. Regulations authorized. — (a) The Commissioner may by regulations prescribe conditions under which poultry products capable of use as human food shall be stored or otherwise handled by any person engaged in the business of buying, selling, freezing, storing, or transporting, in or for intrastate commerce, such articles, whenever the Commissioner deems such action necessary to assure that such articles will not be adulterated or misbranded when delivered to the consumer. Violation of any such regulation is prohibited.

(b) The Board shall promulgate such other rules and regulations as are necessary to carry out the provisions of this Article.

(c) When opportunity is afforded for submission of comments by interested persons on proposed rules or regulations under this Article, it shall include opportunity for oral presentation of views. (1971, c. 677, s. 14.)

§ 106-549.62. Intrastate operations exemptions. — (a) The Board shall, by regulation and under such conditions, including requirements, as to sanitary standards, practices, and procedures as it may prescribe, exempt from specific provisions of this Article with respect to processing of poultry or poultry products solely for intrastate commerce and distribution of poultry or poultry products only in such commerce:

(1) Retail dealers with respect to poultry products sold directly to consumers in individual retail stores, if the only processing operation performed by such retail dealers is the cutting up of poultry products on the premises where such sales to consumers are made;

(2) For such period of time as the Commissioner determines that it would be impracticable to provide inspection and the exemption will aid in the effective administration of this Article, any person engaged in the processing of poultry or poultry products and the poultry or poultry products processed by such person: Provided, however, that no such exemption shall continue in effect more than 120 days after enactment of this Article;

(3) Persons slaughtering, processing, or otherwise handling poultry or poultry products which have been or are to be processed as required by recognized religious dietary laws, to the extent that the Commissioner determines necessary to avoid conflict with such requirements while still effectuating the purposes of this Article;

(4) The slaughtering by any person of poultry of his own raising, and the processing by him and transportation of the poultry products

exclusively for use by him and members of his household and his nonpaying guests and employees;

(5) The custom slaughter by any person of poultry delivered by the owner thereof for such slaughter, and the processing by such slaughterer and transportation of the poultry products exclusively for use, in the household of such owner, by him and members of his household and his nonpaying guests and employees: Provided, that such custom slaughterer does not engage in the business of buying or selling any poultry products capable of use as human food;

(6) The slaughtering and processing of poultry products by any poultry producer on his own premises with respect to sound and healthy poultry raised on his premises and the distribution by any person of the poultry products derived from such operations, if, in lieu of other labeling requirements, such poultry products are identified with the name and address of such poultry producer, and if they are not otherwise misbranded, and are sound, clean, and fit for human food when so distributed; and

(7) The slaughtering of sound and healthy poultry or the processing of poultry products of such poultry by any poultry producer or other person for distribution by him directly to household consumers, restaurants, hotels, and boardinghouses, for use in their own dining rooms, or in the preparation of meals for sales direct to consumers, if, in lieu of other labeling requirements, such poultry products are identified with the name and address of the processor, and if they are not otherwise misbranded and are sound, clean, and fit for human food when distributed by such processor.

(b) In addition to the specific exemptions authorized in subsection (a), the Board shall, when it determines that the protection of consumers from adulterated or misbranded poultry products will not be impaired by such action, provide by regulation, consistent with subsection (c) for the exemption of the operation and products of small enterprises (including poultry producers), not exempted under subsection (a), which are engaged in slaughtering and/or cutting up poultry for distribution as carcasses or parts thereof, solely for distribution within this State, from such provisions of this Article as it deems appropriate, while still protecting the public from adulterated or misbranded products, under such conditions, including sanitary requirements, as it shall prescribe to effectuate the purposes of this Article.

(c) The exemptions provided for in subdivisions (a)(6) and (7) above shall not apply if the poultry producer or other person engages in the current calendar year in the business of buying or selling any poultry or poultry products other than as specified in such subdivisions. No exemption under subdivisions (a)(6) or (7) or subsection (b) shall apply to any poultry producer or other person who slaughters or processes the products of more than 5,000 turkeys or an equivalent number of poultry of all species in the current calendar year (four birds of other species being deemed the equivalent of one turkey).

(d) The provisions of this Article requiring inspection shall not apply to operations of types traditionally and usually conducted at retail stores and restaurants, when conducted at any retail store or restaurant or similar retail-type establishment for sale in normal retail quantities or service of such articles to consumers at such establishments, if no poultry or poultry products are processed at the establishment for distribution outside this State or otherwise subject to inspection under the Federal Poultry Products Inspection Act.

(e) The provisions of this Article shall not apply to poultry producers with respect to poultry of their own raising on their own farms if (i) such producers slaughter not more than 250 turkeys, or not more than an equivalent number of birds of all species during the calendar year for which this exemption is being

determined (four birds of other species being deemed the equivalent of one turkey); (ii) such poultry producers do not engage in buying or selling poultry products other than those produced from poultry raised on their own farms; and (iii) such poultry moves only in intrastate commerce.

(f) The adulteration and misbranding provisions of this Article, other than the requirement of the inspection legend, shall apply to articles which are exempted from inspection under this section, except as otherwise specified under subsections (a), (b), or (e).

(g) The Commissioner may by order suspend or terminate any exemption under subsections (a) or (b) of this section with respect to any person whenever he finds that such action will aid in effectuating the purposes of this Article. (1971, c. 677, s. 15.)

§ 106-549.63. Commissioner may limit entry of products to establishments. —The Commissioner may limit the entry of poultry products and other materials into any official establishment, under such conditions as he may prescribe to assure that allowing the entry of such articles into such inspected establishments will be consistent with the purposes of this Article. (1971, c. 677, s. 16.)

§ 106-549.64. Refusal of inspection services; hearing; appeal. — (a) The Commissioner may (for such period, or indefinitely, as he deems necessary to effectuate the purposes of this Article) refuse to provide, or withdraw, inspection service under this Article with respect to any establishment if he determines, after opportunity for a hearing is accorded to the applicant for, or recipient of, such service, that such applicant or recipient is unfit to engage in any business requiring inspection upon this Article because the applicant or recipient or anyone responsibly connected with the applicant or recipient, has been convicted, in any federal or State court, within the previous 10 years of

(1) Any felony or more than one misdemeanor under any law based upon the acquiring, handling, or distributing of adulterated, mislabeled, or deceptively packaged food or fraud in connection with transactions in food; or

(2) Any felony, involving fraud, bribery, extortion, or any other act or circumstances indicating a lack of the integrity needed for the conduct of operations affecting the public health. For the purpose of this subsection a person shall be deemed to be responsibly connected with the business if he was a partner, officer, director, holder, or owner of ten per centum (10%) or more of its voting stock or employee in a managerial or executive capacity.

(b) Upon the withdrawal of inspection service from any official establishment for failure to destroy condemned poultry products as required under G.S. 106-549.53, or other failure of an official establishment to comply with the requirements as to premises, facilities, or equipment, or the operation thereof, as provided in G.S. 106-549.54, or the refusal of inspection service to any applicant therefor because of failure to comply with any requirements under G.S. 106-549.54, the applicant for, or recipient of, the service shall, upon request, be afforded opportunity for a hearing with respect to the merits or validity of such action; but such withdrawal or refusal shall continue in effect unless otherwise ordered by the Commissioner.

(c) The determination and order of the Commissioner when made after opportunity for hearing, with respect to withdrawal or refusal of inspection service under this Article shall be final and conclusive unless the affected applicant for, or recipient of, inspection service files application for judicial review within 30 days after the effective date of such order in the Superior Court of Wake County. Judicial review of any such order shall be under the provisions

of Chapter 150[A] of the General Statutes. (1971, c. 677, s. 17; 1973, c. 1331, s. 3.)

Editor's Note. — Pursuant to Session Laws 1973, c. 1331, s. 3, effective July 1, 1975, the reference to Chapter 150[A] has been substituted for a reference to Article 33 of Chapter 143 near the end of subsection (c).

§ 106-549.65. Product detained if in violation. — Whenever any poultry product, or any product exempted from the definition of a poultry product, or any dead, dying, disabled, or diseased poultry is found by any inspector of the Meat and Poultry Inspection Service of the Department of Agriculture upon any premises where it is held for purposes of, or during or after distribution in intrastate commerce, and there is reason to believe that any such article is adulterated or misbranded and is capable of use as human food, or that it has not been inspected, in violation of the provisions of this Article or of any other State or federal law or that it has been or is intended to be, distributed in violation of any such provisions, it may be detained by such representative for a period not to exceed 20 days, pending action under G.S. 106-549.66 or notification of any federal, State, or other governmental authorities having jurisdiction over such article or poultry, and shall not be moved by any person, from the place at which it is located when so detained, until released by such representative. All official marks may be required by such representative to be removed from such article or poultry before it is released unless it appears to the satisfaction of the area supervisor of the Department of Agriculture Poultry Inspection Service that the article or poultry is eligible to retain such marks. (1971, c. 677, s. 18.)

§ 106-549.66. Seizure or condemnation proceedings. — (a) Any poultry product, or any dead, dying, or disabled, or diseased poultry, that is being transported in intrastate commerce, subject to this Article, or is held for sale in this State after such transportation, and that

(1) Is or has been processed, sold, transported, or otherwise distributed or offered or received for distribution in violation of this Article, or

(2) Is capable of use as human food and is adulterated or misbranded, or

(3) In any other way is in violation of this Article, shall be liable to be proceeded against and seized and condemned, at any time, on an affidavit filed in any superior court within the jurisdiction of which the article or poultry is found. If the article or poultry is condemned it shall, after entry of the judgment, be disposed of by destruction or sale as the court may direct and the proceeds, if sold, less the court costs and fees, and storage and other proper expenses, shall be paid into the general fund of this State, but the article or poultry shall not be sold contrary to the provisions of this Article, or the Federal Poultry Products Inspection Act or the Federal Food, Drug, and Cosmetic Act: Provided, that upon the execution and delivery of a good and sufficient bond conditioned that the article or poultry shall not be sold or otherwise disposed of contrary to the provisions of this Article or the laws of the United States, the court may direct that such article or poultry be delivered to the owner thereof subject to such supervision by authorized representatives of the Commissioner as is necessary to insure compliance with the applicable laws. When an order of condemnation is entered against the article or poultry and it is released under bond, or destroyed, court costs and fees, and storage and other proper expenses shall be awarded against the person, if any, intervening as claimant of the article or poultry. The proceedings in such cases shall conform, as nearly as may be, to civil actions and either

party may demand trial by jury of any issue of fact joined in any case, and all such proceedings shall be at the suit of and in the name of the State.

(b) The provisions of this section shall in no way derogate from authority for condemnation or seizure conferred by other provisions of this Article, or other laws. (1971, c. 677, s. 19.)

§ 106-549.67. Superior court jurisdiction; proceedings in name of State. — The superior court is vested with jurisdiction specifically to enforce, and to prevent and restrain violations of this Article, and shall have jurisdiction in all other kinds of cases arising under this Article. All proceedings for the enforcement or to restrain violations of this Article shall be by and in the name of this State. (1971, c. 677, s. 20.)

§ 106-549.68. Powers of Commissioner; subpoenas; mandamus; self-incrimination; penalties. — (a) The Commissioner shall also have power:

(1) To gather and compile information concerning and, to investigate from time to time the organization, business, conduct, practices, and management of any person engaged in intrastate commerce, and the relation thereof to other persons;

(2) To require, by general or special orders, persons engaged in intrastate commerce, or any class of them, or any of them to file with the Commissioner, in such form as the Commissioner may prescribe, annual or special, or both annual and special, reports or answers in writing to specific questions, furnishing to the Commissioner such information as he may require as to the organization, business, conduct, practices, management, and relation to other persons of the person filing such reports or answers in writing. Such reports and answers shall be made under oath, or otherwise, as the Commissioner may prescribe, and shall be filed with the Commissioner within such reasonable period as the Commissioner may prescribe, unless additional time be granted in any case by the Commissioner.

(b) (1) For the purposes of this Article the Commissioner shall at all reasonable times have access to, for the purpose of examination, and the right to copy, any documentary evidence of any person being investigated or proceeded against, and may require by subpoena the attendance and testimony of witnesses and the production of all documentary evidence of any person relating to any matter under investigation. The Commissioner may sign subpoenas and may administer oaths and affirmations, examine witnesses, and receive evidence.

(2) Such attendance of witnesses, and the production of such documentary evidence, may be required at any designated place of hearing. In case of disobedience to a subpoena the Commissioner may invoke the aid of any court designated in G.S. 106-549.67 in requiring the attendance and testimony of witnesses and the production of documentary evidence.

(3) Any of the courts designated in G.S. 106-549.67 within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any person, issue an order requiring such person to appear before the Commissioner or to produce documentary evidence if so ordered, or to give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(4) Upon the application of the Attorney General of this State at the request of the Commissioner, the superior court shall have jurisdiction to issue writs or [of] mandamus commanding any person to comply with the

provisions of this Article or any order of the Commissioner made in pursuance thereof.

(5) The Commissioner may order testimony to be taken by deposition in any proceeding or investigation pending under this Article at any stage of such proceeding or investigation. Such depositions may be taken before any person designated by the Commissioner and having power to administer oaths. Such testimony shall be reduced to writing by the person taking the deposition, or under his direction and shall then be subscribed by the deponent. Any person may be compelled to appear and depose and to produce documentary evidence in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the Commissioner as hereinbefore provided.

(6) Witnesses summoned before the Commissioner shall be paid the same fees and mileage that are paid witnesses in the courts of this State, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in such courts.

(7) No person shall be excused from attending and testifying or from producing books, papers, schedules of charges, contracts, agreements, or other documentary evidence before the Commissioner or in obedience to the subpoena of the Commissioner whether such subpoena be signed or issued by him or his delegate, or in any cause or proceeding, criminal or otherwise, based upon or growing out of any alleged violation of this Article, or of any amendments thereto, on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him or it may tend to incriminate him or it or subject him or it to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that any individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

(c) (1) Any person that shall neglect or refuse to attend and testify or to answer any lawful inquiry, or to produce documentary evidence, if in his or its power to do so, in obedience to the subpoena or lawful requirement of the Commissioner shall be guilty of an offense and upon conviction thereof by a court of competent jurisdiction shall be punished by a fine of not less than one thousand dollars ($1,000) nor more than five thousand dollars ($5,000), or by imprisonment for not more than one year, or by both such fine and imprisonment.

(2) Any person that shall willfully make, or cause to be made, any false entry or statement of fact in any report required to be made under this Article, or that shall willfully make, or cause to be made, any false entry in any account, record, or memorandum kept by any person subject to this Article or that shall willfully neglect or fail to make, or to cause to be made, full, true, and correct entries in such accounts, records, or memoranda, of all facts and transactions appertaining to the business of any person subject to this Article or that shall willfully remove out of the jurisdiction of this State, or willfully mutilate, alter, or by any other means falsify any documentary evidence of any such person, or that shall willfully refuse to submit to the Commissioner or to any of his authorized agents, for the purpose of inspection and taking copies, any documentary evidence of any person subject to this Article in his or its possession or within his or its control, shall be deemed guilty of

a misdemeanor and shall be subject, upon conviction in any court of competent jurisdiction to a fine of not less than five hundred dollars ($500.00) nor more than five thousand dollars ($5,000), or to imprisonment for a term of not more than two years, or to both such fine and imprisonment.

(3) If any person required by this Article to file any annual or special report shall fail so to do within the time fixed by the Commissioner for filing the same, and such failure shall continue for 30 days after notice of such default, such person shall forfeit to this State the sum of one hundred dollars ($100.00) for each and every day of the continuance of such failure, which forfeiture shall be payable into the general fund of this State, and shall be recoverable in a civil suit in the name of the State brought in the superior court where the person has his or its principal office or in any county in which he or it shall do business. It shall be the duty of the Attorney General of this State, to prosecute for the recovery of such forfeitures. The costs and expenses of such prosecution shall be paid out of the amount recovered in such action.

(4) Any officer or employee of this State who shall make public any information obtained by the Commissioner without his authority, unless directed by a court, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding two thousand dollars ($2,000), or by imprisonment, not exceeding one year, or by both such fine and imprisonment, in the discretion of the court. (1971, c. 677, s. 21.)

§ 106-549.68A. Article applicable to those regulated by federal act. — The requirements of this Article shall apply to persons, establishments, poultry, poultry products and other articles regulated under the Federal Poultry Products Inspection Act only to the extent provided for in section 23 of said federal act. (1971, c. 677, s. 22.)

§ 106-549.69. Inspection costs. — The cost of inspection rendered under the requirements of this Article, shall be borne by this State, except as provided in G.S. 106-549.52 and except that the cost of overtime and holiday work performed in establishments subject to the provisions of this Article, at such rates as the Commissioner may determine shall be borne by such establishments. Sums received by the Department of Agriculture in reimbursement for sums paid out for such premium pay work shall be available without fiscal year limitation to carry out the purposes of this section. (1971, c. 677, s. 23.)

Article 49E.

Disposal of Dead Diseased Poultry at Commercial Farms.

§ 106-549.70. Disposal pit or incinerator. — Every person, firm or corporation engaged in growing poultry, turkeys or other domestic fowl or products thereof for commercial purposes shall provide and maintain a disposal pit or incinerator of a size and design, approved by the Department of Agriculture, wherein all dead diseased poultry carcasses shall be disposed of in a manner to prevent the spread of disease; provided, that the provisions of this Article shall not apply to growers of poultry, turkeys or other domestic fowl with flocks of 200 or less. (1961, c. 1197, s. 1.)

§ 106-549.71. Penalty for violation. — Any person, firm or corporation violating the provisions of this Article shall, upon conviction, be fined or imprisoned in the discretion of the court. (1961, c. 1197, s. 2.)

ARTICLE 49F.

Biological Residues in Animals.

§ 106-549.81. Definitions. — For the purpose of this Article, the following terms shall have the meanings ascribed to them in this section:

(1) "Animal" means any member of the animal kingdom except man.

(2) "Animal feed" means any meat, grain, forage, or other food of any plant, animal or mineral origin, or any combination thereof, which is normally fed to any animal.

(3) "Animal produce" means any product derived from any animal, whether suitable or not for human consumption.

(4) "Biological residue" means any substance, including metabolites, remaining in or on any animal prior to or at the time of slaughter or in any of its tissues after slaughter, or in or on any animal product or animal feed, as the result of treatment with, or exposure, of the animal, animal product, or animal feed to any pesticide, hormone, hormone-like substance, growth promoter, antibiotic, anthelmintic, tranquilizer, or other therapeutic or prophylactic agent.

(5) "Board" means the North Carolina Board of Agriculture.

(6) "Commissioner" means the North Carolina Commissioner of Agriculture or his authorized delegate.

(7) "Person" means any individual, partnership, corporation, association, cooperative or other legal entity.

(8) "State" means the State of North Carolina. (1971, c. 1183, s. 1.)

§ 106-549.82. Detention or quarantine; lifting quarantine; burden of proof. — Any animal, animal product, or animal feed which the Commissioner has reasonable cause to believe contains or bears any biological residue may be immediately detained or quarantined by written order of the Commissioner until it can be determined in a manner acceptable to the Commissioner that the animal, animal feed, or animal product does not contain or bear a biological residue, or that the biological residue therein is within tolerances which are established by, or approved by, the Board, and the detention or quarantine is removed; or the animal, animal product or animal feed is destroyed or otherwise disposed of in a manner acceptable to the Commissioner; or in the case of a live animal, it has been treated in a manner acceptable to the Commissioner to reduce the level of any biological residue to a level acceptable to the Commissioner. The burden of proof under this section shall be on the owner or custodian of such animal, animal feed or animal product. (1971, c. 1183, s. 2.)

§ 106-549.83. Appellate review; order pending appeal; bond. — Any order or [of] quarantine or detention made by the Commissioner may be appealed by the aggrieved party to the superior court of the county wherein such animal, animal product or animal feed is quarantined or detained. The superior court judge, on at least 24 hours' notice, may hear said appeal in or out of term, in court or in chambers and may affirm, reverse or modify the order of quarantine or detention imposing such conditions as he may deem just and proper. Any party may appeal from the superior court to the Court of Appeals. Pending an appeal from the Commissioner or the superior court, any regular or special superior court judge residing in or holding court in the district may enter such orders as he deems necessary for the preservation or disposition of the animal, animal product or feed, and may require the posting of a bond for the faithful performance of such order. (1971, c. 1183, s. 3.)

§ 106-549.84. Movement of contaminated animals forbidden. — (a) No person shall ship, transport, or otherwise move, or deliver, or receive for movement, any animal, animal product, or animal feed under detention or

quarantine pursuant to G.S. 106-549.82, except under written permit of the Commissioner and in accordance with the conditions stated in such written permission, or until the detention or quarantine order has been revoked by written order of the Commissioner.

(b) No person shall ship, transport, or otherwise move, or deliver or receive for movement any animal, animal product, or animal feed which he knows, or by the exercise of reasonable care would know, contains or bears a biological residue which exceeds the tolerances established or approved by the Board. (1971, c. 1183, s. 4.)

§ 106-549.85. Inspection of animals, records, etc. — The Commissioner may enter any place within the State at all reasonable times where any animal, animal product or animal feed is kept to examine the facilities, inventory and/or copy the records thereof, and to take reasonable samples of any such animal, animal product or animal feed after giving notice in writing to the owner or custodian of the premises to be entered. If such person shall refuse to consent to such entry, the Commissioner may apply to any district court judge and such judge may order, without notice, that the owner or custodian of any place where any animal, animal product or animal feed is kept to permit the Commissioner to enter such place for the purposes herein stated and failure by any person to obey such order may be punished as for contempt. (1971, c. 1183, s. 5.)

§ 106-549.86. Investigation to discover violation. — The Commissioner shall make such investigations or inspections as he deems necessary to determine whether any person has violated, or is violating, any provision of this Article or any regulation promulgated thereunder, and when any biological residue is found in or on any animal, animal product, or animal feed, the Commissioner may make such investigation or inspection as he deems necessary to determine the source of the substance which resulted in the biological residue. (1971, c. 1183, s. 6.)

§ 106-549.87. Promulgation of regulation. — The North Carolina Board of Agriculture is hereby authorized to promulgate regulations as it may deem necessary to effectuate the purposes of this Article, including but not limited to, tolerances for biological residues. It shall be unlawful for any person to violate any provision of this Article or any regulation promulgated by the Board under authority of this Article. (1971, c. 1183, s. 7.)

§ 106-549.88. Penalties. — Any person who violates any provisions of this Article or any regulations thereunder shall, upon conviction thereof, be subject to a fine of not more than five hundred dollars ($500.00) or imprisonment not to exceed six months, or both fine and imprisonment. (1971, c. 1183, s. 8.)

ARTICLE 50.

Promotion of Use and Sale of Agricultural Products.

§ 106-550. Policy as to promotion of use of, and markets for, farm products; tobacco excluded. — It is declared to be in the interest of the public welfare that the North Carolina farmers who are producers of livestock, poultry, field crops and other agricultural products, including cattle, swine, sheep, broilers, turkeys, commercial eggs, peanuts, cotton, potatoes, peaches, apples, berries, vegetables and other fruits of all kinds, as well as bulbs and flowers and other agricultural products having a domestic or foreign market, shall be permitted and encouraged to act jointly and in cooperation with growers, handlers, dealers and processors of such products in promoting and stimulating, by advertising and other methods, the increased production, use and sale, domestic and foreign, of any and all of such agricultural commodities. The

provisions of this Article, however, shall not include the agricultural product of tobacco, with respect to which a separate provision and enactment has heretofore been made. (1947, c. 1018, s. 1; 1951, c. 1172, s. 1; 1957, cc. 260, 1352.)

Editor's Note. — For comment on article, suggesting its invalidity as an unlawful delegation of governmental power, see 25 N.C.L. Rev. 396.

§ 106-551. Federal Agricultural Marketing Act. — The passage by the Seventy-Ninth Congress of a law designated as Public Law 733, and more particularly Title II of that act, cited as "Agricultural Marketing Act of 1946," makes it all the more important for producers, handlers, processors and others of specific agricultural commodities to associate themselves in action programs, separately and with public and private agencies, to obtain the greatest and most immediate benefits under the provisions of such law, in respect to research, studies and problems of marketing, transportation and distribution. (1947, c. 1018, s. 2.)

§ 106-552. Associations, activity, etc., deemed not in restraint of trade. — No association, meeting or activity undertaken in pursuance of the provisions of this Article and intended to benefit all of the producers, handlers and processors of a particular commodity shall be deemed or considered illegal or in restraint of trade. (1947, c. 1018, s. 3.)

§ 106-553. Policy as to referenda, assessments, etc., for promoting use and sale of farm products. — It is hereby further declared to be in the public interest and highly advantageous to the agricultural economy of the State that farmers, producers and growers commercially producing the commodities herein referred to shall be permitted by referendum to be held among the respective groups and subject to the provisions of this Article, to levy upon themselves an assessment on such respective commodities or upon the acreage used in the production of the same and provide for the collection of the same, for the purpose of financing or contributing towards the financing of a program of advertising and other methods designed to increase the consumption of and the domestic as well as foreign markets for such agricultural products. Such assessments may also be used for the purpose of financing or contributing toward the financing of a program of production, use and sale of any and all such agricultural commodities. (1947, c. 1018, s. 4; 1951, c. 1172, s. 2.)

§ 106-554. Application to Board of Agriculture for authorization of referendum. — Any existing commission, council, board or other agency fairly representative of the growers and producers of any agricultural commodity herein referred to, and any such commission, council, board or other agency hereafter created for and fairly representative of the growers or producers of any such agricultural commodity herein referred to, may at any time after the passage and ratification of this Article make application to the Board of Agriculture of the State of North Carolina for certification and approval for the purpose of conducting a referendum among the growers or producers of such particular agricultural commodity, for commercial purposes, upon the question of levying an assessment under the provisions of this Article, collecting and utilizing the same for the purposes stated in such referendum. (1947, c. 1018, s. 5.)

§ 106-555. Action by Board on application. — Upon the filing with the Board of Agriculture of such application on the part of any commission, council, board or other agency, the said Board of Agriculture shall within 30 days thereafter meet and consider such application; and if upon such consideration the said Board of Agriculture shall find that the commission, council, board or

other agency making such application is fairly representative of and has been duly chosen and delegated as representative of the growers producing such commodity, and shall otherwise find and determine that such application is in conformity with the provisions of this Article and the purposes herein stated, then and in such an event it shall be the duty of the Board of Agriculture to certify such commission, council, board or other agency as the duly delegated and authorized group or agency representative of the commercial growers and producers of such agricultural commodity, and shall likewise certify that such agency is duly authorized to conduct among the growers and producers of such commodity a referendum for the purposes herein stated. (1947, c. 1018, s. 6.)

§ 106-556. Conduct of referendum among growers and producers on question of assessments. — Upon being so certified by the said Board of Agriculture in the manner hereinbefore set forth, such commission, council, board or other agency shall thereupon be fully authorized and empowered to hold and conduct on the part of the producers and growers of such particular agricultural commodity a referendum on the question of whether or not such growers and producers shall levy upon themselves an assessment under and subject to and for the purposes stated in this Article. Such referendum may be conducted either on a statewide or area basis. (1947, c. 1018, s. 7.)

§ 106-557. Notice of referendum; statement of amount, basis and purpose of assessment; maximum assessment. — With respect to any referendum conducted under the provisions of this Article, the duly certified commission, council, board or other agency shall, before calling and announcing such referendum, fix, determine and publicly announce at least 30 days before the date determined upon for such referendum, the date, hours and polling places for voting in such referendum, the amount and basis of the assessment proposed to be collected, the means by which such assessment shall be collected if authorized by the growers, and the general purposes to which said amount so collected shall be applied; no annual assessment levied under the provisions of this Article shall exceed one half of one percent (½ of 1%) of the value of the year's production of such agricultural commodity grown by any farmer, producer or grower included in the group to which such referendum is submitted. Provided, that the assessment for the research and promotion programs of the American Dairy Association of North Carolina may be fixed on volume not to exceed six cents (6¢) per hundredweight of milk sold. (1947, c. 1018, s. 8; 1967, c. 774, s. 1; c. 1268.)

§ 106-557.1. Ballot by mail. — (a) As an alternative method of conducting a referendum under the provisions of this Article, the certified agency in its discretion may conduct the referendum by a mail ballot as herein provided. In the event that a certified agency determines in its discretion to conduct a mail ballot, public notice of said mail ballot shall be made at least 30 days before the date of said referendum. Said notice shall contain the same information required by G.S. 106-557, except that the notice will also state that the ballot is to be conducted by mail rather than at polling places. The notice shall also state that official ballots are being mailed on a date specified in the notice to all persons known by the certified agency to be eligible to vote and that any person not receiving by mail an official ballot by a date specified in the notice will have 10 days thereafter to apply for an official ballot at the office of the certified agency. The notice shall state the deadline for the receipt of all ballots and the address of the certified agency.

Official ballots shall be prepared by the certified agency and mailed by first-class mail to the last known address of all persons known by the certified agency to be eligible to vote. As announced in the public notice, said ballots shall be made available for a period of not less than 10 days, to those who are eligible to vote in said referendum and did not receive a ballot by mail.

Before any person shall receive an official ballot, he shall furnish such proof as the certified agency may require of his eligibility to vote in said referendum. The certified agency shall keep a list of those persons who receive official ballots. No person may receive more than one official ballot unless he satisfies the certified agency that his ballot has been lost or destroyed.

No votes shall be counted which are not on official ballots. To be eligible to be counted, ballots must be received by the certified agency at the place and by the deadline previously announced in the public notice of said referendum.

(b) The provisions of this section shall not apply to the North Carolina Potato Association and the North Carolina Soybean Association. (1969, c. 111.)

§ 106-558. Management of referendum; expenses. — The arrangements for and management of any referendum conducted under the provisions of this Article shall be under the direction of the commission, council, board or other agency duly certified and authorized to conduct the same, and any and all expenses in connection therewith shall be borne by such commission, council, board or agency. (1947, c. 1018, s. 9.)

§ 106-559. Basis of referendum; eligibility for participation; question submitted; special provisions for North Carolina Cotton Promotion Association. — Any referendum conducted under the provisions of this Article may be held either on an area or statewide basis, as may be determined by the certified agency before such referendum is called; and such referendum, either on an area or statewide basis, may be participated in by all farmers engaged in the production of such agricultural commodity on a commercial basis, including owners of farms on which such commodity is produced, tenants and sharecroppers. In such referendum, such individuals so eligible for participation shall vote upon the question of whether or not there shall be levied an annual assessment for a period of three years in the amount set forth in the call for such referendum on the agricultural product covered by such referendum. Provided, that notwithstanding any other provision of this Chapter, the North Carolina Cotton Promotion Association, Inc., in 1967 shall hold a referendum, pursuant to law, for the years 1969 and 1970, or for the years 1969 through 1973, in its discretion. Thereafter, the North Carolina Cotton Promotion Association, Inc. shall conduct either triennial or sexennial referendums as provided by law. (1947, c. 1018, s. 10; 1967, cc. 213, 561.)

§ 106-560. Effect of more than one-third vote against assessment. — If in such referendum with respect to any agricultural commodity herein referred to more than one third of the farmers and producers in the area in which such referendum is conducted, eligible to participate and voting therein shall vote in the negative and against the levying or collection of such assessment, then in such an event no assessment shall be levied or collected. (1947, c. 1018, s. 11.)

§ 106-561. Effect of two-thirds vote for assessment. — If in such referendum called under the provisions of this Article two thirds or more of the farmers or producers in the area in which such referendum is conducted, eligible to participate and voting therein shall vote in the affirmative and in favor of the levying and collection of such assessment proposed in such referendum on the agricultural commodity covered thereby, then such assessment shall be collected in the manner determined and announced by the agency conducting such referendum. (1947, c. 1018, s. 12.)

§ 106-562. Regulations as to referendum; notice to farm organizations and county agents. — The hours, voting places, rules and regulations and the area within which such referendum herein authorized with respect to any of the agricultural commodities herein referred to shall be established and determined by the agency of the commercial growers and producers of such agricultural

commodity duly certified by the Board of Agriculture as hereinbefore provided; the said referendum date, area, hours, voting places, rules and regulations with respect to the holding of such referendum shall be published by such agency conducting the same through the medium of the public press in the State of North Carolina at least 30 days before the holding of such referendum, and direct written notice thereof shall likewise be given to all farm organizations within the State of North Carolina and to each county agent in any county in which such agricultural product is grown. Such notice shall likewise contain a statement of the amount of annual assessment proposed to be levied — which assessment in any event shall not exceed one half of one percent (½ of 1%) of the value of the year's production of such agricultural commodity grown by any farmer, producer or grower included in the group to which such referendum is submitted — and shall likewise state the method by which such assessment shall be collected and how the proceeds thereof shall be administered and the purposes to which the same shall be applied, which purposes shall be in keeping with the provisions of this Article. (1947, c. 1018, s. 13; 1967, c. 774, s. 2.)

§ 106-563. Distribution of ballots; arrangements for holding referendum; declaration of results. — The duly certified agency of the producers of any agricultural product among whom a referendum shall be conducted under the provisions of this Article shall likewise prepare and distribute in advance of such referendum all necessary ballots for the purposes thereof, and shall, under rules and regulations promulgated by said agency, arrange for the necessary poll holders for conducting the said referendum; and following such referendum and within 10 days thereafter the said agency shall canvass and publicly declare the result of such referendum. (1947, c. 1018, s. 14.)

§ 106-564. Collection of assessments; custody and use of funds. — In the event two thirds or more of the farmers eligible for participation in such referendum and voting therein shall vote in favor of such assessment, then the said assessment shall be collected annually for the number of years set forth in the call for such referendum, and the collection of such assessment shall be under such method, rules and regulations as may be determined by the agency conducting the same; and the said assessment so collected shall be paid into the treasury of the agency conducting such referendum, to be used together with other funds from other sources, including donations from individuals, concerns or corporations, and grants from State or governmental agencies, for the purpose of promoting and stimulating, by advertising and other methods, the increased use and sale, domestic and foreign, of the agricultural commodity covered by such referendum. Such assessments may also be used for the purpose of financing or contributing toward the financing of a program of production, use and sale of any and all such agricultural commodities. (1947, c. 1018, s. 15; 1951, c. 1172, s. 3; 1965, c. 1046, s. 1.)

§ 106-564.1. Alternate method for collection of assessments. — As an alternate method for the collection of assessments provided for in G.S. 106-564, and upon the request of the duly certified agency of the producers of any agricultural products referred to in G.S. 106-550, the Commissioner of Agriculture shall notify, by registered letter, all persons, firms and corporations engaged in the business of purchasing any such agricultural products in this State, that on and after the date specified in the letter the assessments shall be deducted by the purchaser, or his agent or representative, from the purchase price of any such agricultural products. The assessment so deducted, shall, on or before the first day of June of each year following such deduction, be remitted by such purchaser to the Commissioner of Agriculture of North Carolina who shall thereupon pay the amount of the assessments to the duly certified agency of the producers entitled thereto. The books and records of all such purchasers

of agricultural products shall at all times during regular business hours be open for inspection by the Commissioner of Agriculture or his duly authorized agents.

Any packer, processor or other purchaser who originally purchases from the grower, apples grown in North Carolina, shall collect from the grower thereof any marketing assessment due under the provisions of Article 50 of Chapter 106 and shall remit the same to the North Carolina Department of Agriculture. Upon failure of said packer, processor or other purchaser to collect and remit said assessment then the amount of the assessment shall become the obligation of the packer, processor or other purchaser who originally purchased the apples from the grower and he shall become liable therefor to the North Carolina Department of Agriculture. Failure of the packer, processor or other purchaser to comply with the provisions of this section shall constitute a bar to engaging in said business in this State upon proper notice from the Board of Agriculture. The Board of Agriculture shall have authority to promulgate such rules and regulations as shall be necessary to carry out the purpose and intent of this section. (1953, c. 917; 1969, c. 605, s. 3.)

§ 106-564.2. Further alternative method for collection of assessments. — As an alternate method for the collection of assessments provided for in G.S. 106-564, the duly certified agency representing the producers of peaches, apples or other tree fruits, is hereby authorized to establish the names, addresses and number of trees or acres of trees and certify same to the Commissioner of Agriculture. The Commissioner of Agriculture shall then notify by registered letter such certified producers that on or before the date specified by the duly certified agency, the assessments shall be paid to the Commissioner of Agriculture by the producers. The date of collections of such assessments may be established by the duly certified agency representing the producers of any agricultural product referred to in G.S. 106-550. (1955, c. 374.)

§ 106-564.3. Alternative method for collection of assessments relating to cattle. — As an alternative method for the collection of assessments provided for in Article 50 of Chapter 106 of the General Statutes, as amended, and as the same relates to all cattle, including those cattle sold for slaughter, upon the request of the duly certified agency of the producers of all cattle, including those which are to be sold for slaughter, the Commissioner of Agriculture shall notify, by registered letter, all livestock auction markets, slaughterhouses, abattoirs, packinghouses, and any and all persons, firms and corporations, engaged in the buying, selling or handling of cattle in this State, and on and after the date specified in the letter, the assessments approved and in force under said referendum shall be deducted by the purchaser, or his agent or representative, from the purchase price of all cattle bought, acquired or sold. It shall be unlawful for any livestock auction market, slaughterhouse, abattoir, packinghouse or the administrators or managers or agents of same or for any person, firm or corporation to acquire, buy or sell any cattle, including cattle for slaughter, without deducting the assessments previously authorized by said referendum. The assessment or assessments for any month so deducted, shall, on or before the twentieth day of the following month, be remitted by such purchaser as above described, to the Commissioner of Agriculture of North Carolina, who shall thereupon pay the amount of the assessments to the duly certified agency of the producers of all such cattle entitled thereto. The books and records of all such livestock auction markets, slaughterhouses, abattoirs, packinghouses, or persons, firms or corporations engaged in buying, acquiring or selling all cattle shall at all times during regular business hours be open for inspection by the Commissioner of Agriculture or his duly authorized agents. Provided, however, that if any livestock auction market, slaughterhouse, abattoir, packinghouse, or any person, firm or corporation engaged in buying, selling or handling cattle in this State shall fail to collect or pay such assessments so deducted to the

Commissioner of Agriculture of North Carolina, as herein provided, then and in such event suit may be brought by the duly certified agency concerned in a court of competent jurisdiction to enforce the collection of such assessments. (1959, c. 1176; 1969, c. 184.)

§ 106-565. Subsequent referendum. — In the event such referendum so to be conducted as herein provided shall not be supported by two thirds or more of those eligible for participation therein and voting therein, then the duly certified agency conducting the said referendum shall have full power and authority to call another referendum for the purposes herein set forth in the next succeeding year, on the question of an annual assessment for three years. (1947, c. 1018, s. 16.)

§ 106-566. Referendum as to continuance of assessments approved at prior referendum. — In the event the first such referendum or any subsequent referendum is carried by the votes of two thirds or more of the eligible farmers participating therein and assessments in pursuance thereof are levied annually for the period set forth in the call for such referendum, then the agency conducting such referendum shall in its discretion have full power and authority to call and conduct during the third year of such first period or the last year of any subsequent period another referendum in which the farmers and producers of such agricultural commodity shall vote upon the question of whether or not such assessments shall be continued for the next ensuing three years or continued for the next ensuing six years. (1947, c. 1018, s. 17; 1965, c. 1046, s. 2.)

§ 106-567. Rights of farmers dissatisfied with assessments; time for demanding refund. — In the event such referendum is carried in the affirmative and the assessment is levied and collected as provided herein and under the regulations to be promulgated by the duly certified agency conducting the same, any farmer or producer upon and against whom such annual assessments shall have been levied and collected under the provisions of this Article, if dissatisfied with said assessment and the result thereof, shall have the right to demand of and receive from the treasurer of said agency a refund of such annual assessment so collected from such farmer or producer, provided such demand for refund is made in writing within 30 days from the date on which said assessment is collected from such farmer or producer. Provided, however, that as to growers or producers of potatoes, apples or peaches the right of refund of assessments as provided herein shall be contingent upon such growers or producers having paid said assessment on or before the end of the assessment year in which the assessment was levied. The assessment year shall be determined by the duly certified commission, council, board or agency representing the respective commodity: Provided further, that any farmer or producer of potatoes, apples or peaches who fails to make any protest against the assessment and levy in writing, addressed to the duly certified commission, council, board or agency representing the commodity concerned, within 30 days from the date such assessment shall become due and payable, then, and in such event, suit may be brought by the duly certified commission, council, board or agency concerned in a court of competent jurisdiction to enforce the collection of the assessment. Provided further that on and after July 1, 1972, as to growers or producers of apples there shall be no right of refund of assessments levied pursuant to the referendum provided for by Article 50, Chapter 106 of the General Statutes of North Carolina. (1947, c. 1018, s. 18; 1959, c. 311; 1969, c. 605, ss. 1, 2.)

§ 106-568. Publication of financial statement by treasurer of agency; bond required. — In the event of the levying and collection of assessments as herein provided, the treasurer of the agency conducting same shall within 30 days after

the end of any calendar year in which such assessments are collected, publish through the medium of the press of the State a statement of the amount or amounts so received and collected by him under the provisions of this Article. Before collecting and receiving such assessments, such treasurer shall give a bond in the amount of at least the estimated total of such assessments as will be collected, such bond to have as surety thereon a surety company licensed to do business in the State of North Carolina, and to be in the form and amount approved by the agency conducting such referendum and to be filed with the chairman or executive head of such agency. (1947, c. 1018, s. 19.)

ARTICLE 50A.

Promotion of Agricultural Research and Dissemination of Findings.

§ 106-568.1. Policy as to joint action of farmers. — It is declared to be in the public interest that North Carolina farmers producing agricultural products of all kinds, including cotton, tobacco, peanuts, soybeans, potatoes, vegetables, berries, fruits, livestock, livestock products, poultry and turkeys, and any other agricultural products having domestic and/or foreign markets, be permitted to act jointly in cooperation with each other in encouraging an expanding program of agricultural research and the dissemination of agricultural research findings. (1951, c. 827, s. 1.)

§ 106-568.2. Policy as to referendum and assessment. — It is further declared to be in the public interest and highly advantageous to the economic development of the State that farmers, producers, and growers of agricultural commodities using commercial feed and/or fertilizers or their ingredients be permitted by referendum held among themselves to levy upon themselves an assessment of five cents (5¢) per ton on mixed fertilizers, commercial feed, and their ingredients (except lime and land plaster) to provide funds through the Agricultural Foundation to supplement the established program of agricultural research and dissemination of research facts. (1951, c. 827, s. 2.)

§ 106-568.3. Action of Board of Agriculture on petition for referendum. — The State Board of Agriculture, upon a petition being filed with it so requesting and signed by the governing boards of the North Carolina Farm Bureau Federation, the North Carolina State Grange, and the North Carolina Agricultural Foundation, Inc., shall examine such petition and upon finding that it complies with the provisions of this Article shall authorize the holding of a referendum as hereinafter set out and the governing boards of the North Carolina Farm Bureau Federation, the North Carolina State Grange, and the North Carolina Agricultural Foundation, Inc., shall thereupon be fully authorized and empowered to hold and conduct on the part of the producers and growers of the commodities herein mentioned a referendum on the question of whether or not such growers and producers shall levy upon themselves an assessment under and subject to and for the purposes stated in this Article. (1951, c. 827, s. 3.)

§ 106-568.4. By whom referendum to be managed; annquncement. — The governing boards of the North Carolina Farm Bureau Federation, the North Carolina State Grange, and the North Carolina Agricultural Foundation, Inc., shall arrange for and manage any referendum conducted under the provisions of this Article but shall, 60 days before the date upon which it is to be held, fix, determine, and publicly announce in each county the date, hours, and polling places in that county for voting in such referendum, the amount and basis proposed to be collected, the means by which such assessment shall be collected

as authorized by the growers and producers, and the general purposes for which said funds so collected shall be applied. (1951, c. 827, s. 4.)

§ 106-568.5. When assessment shall and shall not be levied. — If in such referendum more than one third of the farmers and producers eligible to participate therein and voting therein shall vote in the negative and against the levying or collection of such assessment, then in such event no assessment shall be levied or collected, but if two thirds or more of such farmers and producers voting therein shall vote in the affirmative and in favor of the levying or collection of such assessment, then such assessment shall be collected in the manner hereinafter provided. (1951, c. 827, s. 5.)

§ 106-568.6. Determination and notice of date, area, hours, voting places, etc. — The three organizations herein designated to hold such referendum shall fix the date, area, hours, voting places, rules and regulations with respect to the holding of such referendum and cause the same to be published in the press of the State at least 60 days before holding such referendum and shall certify such information to the State Commissioner of Agriculture and to each of the farm organizations of the State. Such notice, so published and furnished to the several agencies, shall contain, in addition to the other information herein required, a statement of the amount of annual assessment proposed to be levied, and the purposes for which such assessment shall be applied. (1951, c. 827, s. 6.)

§ 106-568.7. Preparation and distribution of ballots; poll holders; canvass and announcement of results. — The governing boards of the North Carolina Farm Bureau Federation, the North Carolina State Grange, and the North Carolina Agricultural Foundation, Inc., shall prepare and distribute in advance of such referendum all necessary ballots and shall under rules and regulations, adopted and promulgated by the organizations holding such referendum, arrange for the necessary poll holders and shall, within 10 days after the date of such referendum, canvass and publicly declare the results thereof. (1951, c. 827, s. 7.)

§ 106-568.8. Collection and disposition of assessment; report of receipts and disbursements; audit. — In the event two thirds or more of the eligible farmers and producers participating in said referendum vote in favor of such assessment, then said assessment shall be collected for a period of six years under rules, regulations, and methods as provided for in this Article. The assessments shall be added to the wholesale purchase price of each ton of fertilizer, commercial feed, and/or their ingredients (except lime and land plaster) by the manufacturer of said fertilizer and feed. The assessment so collected shall be paid by the manufacturer into the hands of the North Carolina Commissioner of Agriculture on the same tonnage and at the same time and in the same manner as prescribed for the reporting of the inspection tax on commercial feeds and fertilizers as prescribed by G.S. 106-50.6 and 106-99. The Commissioner shall then remit said five cents (5¢) per ton for the total tonnage as reported by all manufacturers of commercial feeds, fertilizers, and their ingredients to the treasurer of the North Carolina Agricultural Foundation, Inc., who shall disburse such funds for the purposes herein enumerated and not inconsistent with provisions contained in the charter and bylaws of the North Carolina Agricultural Foundation, Inc. Signed copies of the receipts for such remittances made by the Commissioner to the treasurer of the North Carolina Agricultural Foundation, Inc., shall be furnished the Commissioner of Agriculture, the North Carolina Farm Bureau Federation, and the North Carolina State Grange. The treasurer of the North Carolina Agricultural Foundation, Inc., shall make an annual report at each annual meeting of the Foundation directors of total receipts and disbursements for the year and shall

file a copy of said report with the Commissioner of Agriculture and shall make available a copy of said report for publication.

It shall be the duty of the Commissioner of Agriculture to audit and check the remittances of five cents (5¢) per ton by the manufacturer to the Commissioner in the same manner and at the same time as audits and checks are made of remittances of the inspection tax on commercial feeds and fertilizers. (1951, c. 827, s. 8; 1967, c. 631, s. 1.)

Editor's Note. — Section 106-99, referred to in the section above, was repealed by Session Laws 1973, c. 771, s. 19. For present provisions as to inspection fees on commercial feeds, see § 106-284.40.

§ 106-568.9. Refunds to farmers. — In the event such a referendum is carried in the affirmative and the assessment is levied and collected as herein provided and under the regulations to be promulgated by the duly certified agencies conducting the same, any farmer upon whom and against whom any such assessment shall have been added and collected under the provisions of this Article, if dissatisfied with the said assessment, shall have the right to demand of and receive from the treasurer of said North Carolina Agricultural Foundation, Inc., a refund of such amount so collected from such farmer or producer provided such demand for refund is made in writing within 30 days from the date of which said assessment is collected from such farmer or producer. (1951, c. 827, s. 9.)

§ 106-568.10. Subsequent referenda; continuation of assessment. — If the assessment is defeated in the referendum, the governing boards of the North Carolina Farm Bureau Federation, the North Carolina State Grange, and the North Carolina Agricultural Foundation, Inc., shall have full power and authority to call another referendum for the purposes herein set out in the next succeeding year on the question of the annual assessment for six years. In the event the assessment carried in a referendum by two thirds or more of the eligible farmers participating therein, such assessment shall be levied annually for the six years set forth in the call for such referendum and a new referendum may be called and conducted during the sixth year of such period on the question of whether or not such assessment shall be continued for the next ensuing six years. (1951, c. 827, s. 10; 1967, c. 631, s. 2.)

§ 106-568.11. Effect of more than one-third vote against assessment. — If in such referendum called under the provisions of this Article more than one third of the farmers and producers in the State of North Carolina, eligible to participate and voting therein, shall vote in the negative and against the levying or collection of such assessment, then in such an event no assessment shall be levied or collected. (1951, c. 827, s. 11.)

§ 106-568.12. Effect of two-thirds vote in favor of assessment. — If in such referendum called under the provisions of this Article two thirds or more of the farmers or producers in the State of North Carolina, eligible to participate and voting therein, shall vote in the affirmative and in favor of the levying and collection of such assessment proposed in such referendum on the commodities covered thereby, then such assessment shall be collected in the manner prescribed herein (determined and announced by the agencies conducting such referendum). (1951, c. 827, s. 12.)

ARTICLE 50B.

North Carolina Agricultural Hall of Fame.

§ 106-568.13. North Carolina Agricultural Hall of Fame created. — There is hereby created and established as an agency of the State of North Carolina the North Carolina Agricultural Hall of Fame. (1953, c. 1129, s. 1.)

State Government Reorganization. — The North Carolina Agricultural Hall of Fame was transferred to the Department of Agriculture by § 143A-61, enacted by Session Laws 1971, c. 864.

§ 106-568.14. Board of directors; membership; compensation. — The North Carolina Agricultural Hall of Fame shall be under the general supervision and control of a board of directors consisting of the following: the Commissioner of Agriculture of the State of North Carolina, who shall act as chairman; the Director of the North Carolina Agricultural Extension Service; the State Supervisor of Vocational Agriculture; the President of the North Carolina Farm Bureau Federation; the Master of the State Grange, the foregoing being ex officio members; and three members who shall be appointed by the Governor of North Carolina. All of said members shall serve without compensation. (1953, c. 1129, s. 2.)

§ 106-568.15. Terms of directors. — One of the appointive members shall be appointed for a term of two years, one for a term of four years and one for a term of six years. The successor to each of the appointive members shall be appointed for a term of six years, and in case of a vacancy, the Governor is authorized to appoint a successor for the remainder of the unexpired term. The ex officio members shall serve so long as they hold their respective offices or positions which entitle them to ex officio membership on said board of directors. (1953, c. 1129, s. 3.)

§ 106-568.16. Admission of candidates to Hall of Fame. — The said board is hereby empowered to formulate rules and regulations governing acceptance and admission of candidates to said North Carolina Agricultural Hall of Fame, provided that no name shall be accepted until an authentic and written record of achievements of said person in agricultural activities shall have been presented to and accepted by a majority vote of said board created by this Article, and provided that both men and women are eligible for recognition. (1953, c. 1129, s. 4.)

§ 106-568.17. Acceptance of gifts, bequests and awards; display thereof. — The said board is hereby empowered to accept and receive gifts, bequests, and awards which are to become the sole property of said North Carolina Agricultural Hall of Fame and are to be kept in a proper manner in a suitable room or hall in some state-owned building in Raleigh, provided that duplicates of such gifts, bequests, and awards may be displayed in a suitable room or hall in the School of Agriculture of the North Carolina State College of Agriculture and Engineering at Raleigh, North Carolina. (1953, c. 1129, s. 5.)

Cross Reference. — For designation of North Carolina State College of Agriculture and Engineering as North Carolina State University at Raleigh, see §§ 116-2, 116-4.

ARTICLE 50C.

Promotion of Sale and Use of Tobacco.

§ 106-568.18. Policy as to joint action of farmers. — It is hereby declared to be in the public interest that the farmers of North Carolina who produce

flue-cured tobacco be permitted and encouraged to act jointly in promoting and stimulating, by organized methods and through the medium established for such purpose, export trade for flue-cured tobacco and the use of tobacco everywhere. (1959, c. 309, s. 1.)

§ 106-568.19. Policy as to referendum on question of annual assessment. — For the purpose of raising reasonable and necessary funds for producer participation in the operations of the agency set up under farmer sponsorship for the promotion of export trade in flue-cured tobacco and the use of tobacco everywhere, it is proper, desirable, necessary and in the public interest that the farmers in this State engaged in the production of flue-cured tobacco shall have the opportunity and privilege of participating in a referendum to be held as hereinafter provided, in which referendum there shall be determined the question of whether or not the farmers of the State engaged in the production of flue-cured tobacco shall levy upon themselves an annual assessment for the purposes herein stated. (1959, c. 309, s. 2.)

§ 106-568.20. Referendum in 1961 on assessment for next three years. — During the year 1961 and upon the exact date in such year as may be determined in the manner hereinafter set forth and under rules and regulations as established under the provisions of this Article, there shall be held in every county in North Carolina in which flue-cured tobacco is produced a referendum to be participated in by all farmers engaged in the production of flue-cured tobacco, including owners of farms on which such tobacco is produced, tenants and sharecroppers, in which referendum said individuals so eligible for participation shall vote upon the question of whether or not there shall be levied an annual assessment for a period of three years (1962, 1963 and 1964), such amount as may have been theretofore or as may be thereafter determined by the board of directors of Tobacco Associates, Incorporated, but not more than one dollar ($1.00) per acre per year on all flue-cured tobacco acreage in the State of North Carolina. (1959, c. 309, s. 3.)

§ 106-568.21. Effect of more than one-third vote against assessment in 1961 referendum. — If in such referendum more than one third of the tobacco farmers eligible to participate therein and voting therein shall vote in the negative and against the levying or collection of such assessment, then no assessment shall be levied or collected pursuant to that referendum. (1959, c. 309, s. 4.)

§ 106-568.22. Effect of two-thirds vote for assessment in 1961 referendum. — If in such referendum two thirds or more of the eligible tobacco farmers voting therein shall vote in the affirmative and in favor of the levying or collection of such assessment to be determined by the board of directors of Tobacco Associates, Incorporated, but in an amount of not more than one dollar ($1.00) per acre per year on all flue-cured tobacco acreage in the State of North Carolina, then such assessment shall be collected in the manner hereinafter provided. (1959, c. 309, s. 5.)

§ 106-568.23. Regulations as to 1961 referendum; notice to farm organizations and county agents. — The exact date in the said year 1961, on which such referendum shall be held and the hours, voting places, and rules and regulations under which such referendum shall be conducted, shall be established and determined by the board of directors of the North Carolina corporation known and designated as Tobacco Associates, Incorporated, established under the leadership of farm organizations in the State of North Carolina for the purpose of stimulating, developing and expanding export trade for flue-cured tobacco and the use of tobacco everywhere; the said referendum date, hours, voting places, rules and regulations with respect to the holding of

such referendum shall be published through the medium of the public press in the State of North Carolina by said board of directors at least 30 days before the holding of such referendum, and direct written notice thereof shall likewise be given to all farm organizations within the State of North Carolina and to each county agent in any county in which flue-cured tobacco is grown. (1959, c. 309, s. 6.)

§ 106-568.24. Distribution of ballots; arrangements for holding 1961 referendum; declaration of results. — The said board of directors of Tobacco Associates, Incorporated, shall likewise prepare and distribute in advance of said referendum all necessary ballots for the purpose thereof, and shall under the rules and regulations promulgated by said board arrange for the necessary poll holders for conducting the said referendum; and following such referendum and within 10 days thereafter the said board of directors shall canvass and publicly declare the results of such referendum. (1959, c. 309, s. 7.)

§ 106-568.25. Question at 1961 referendum. — Said referendum shall be upon the question of whether or not the farmers eligible for participation therein and voting therein shall favor an assessment for the period of three years, 1962, 1963 and 1964, in an amount in each of said years as determined by or to be determined by the board of directors of Tobacco Associates, Incorporated but not more than one dollar ($1.00) per acre per year on all flue-cured tobacco acreage in the State of North Carolina, for the purpose of providing farmer participation in the fund and through the agency established for the stimulation, expansion and development of export markets for flue-cured tobacco and the encouragement of the use of flue-cured tobacco everywhere. (1959, c. 309, s. 8.)

§ 106-568.26. Collection of assessments; custody and use of funds. — In the event two thirds or more of the eligible farmers voting therein shall vote in favor of such assessment, then the said assessment shall be collected annually for the years herein set forth and under such method, rules and regulations as may be determined by the board of directors of the said Tobacco Associates, Incorporated, and the said assessment so collected shall be paid into the treasurer [treasury] of said Tobacco Associates, Incorporated, to be used along with funds from other sources, for the purpose of stimulating, developing and expanding export trade for flue-cured tobacco and encouraging the use of flue-cured tobacco everywhere. (1959, c. 309, s. 9.)

§ 106-568.27. Required affirmative vote of directors of Tobacco Associates, Incorporated. — No assessment shall be made pursuant to this Article unless same shall receive the affirmative vote of not less than two thirds of the members of the board of directors of Tobacco Associates, Incorporated, including the affirmative vote of not less than two thirds of such board members who were elected by North Carolina farm organizations. (1959, c. 309, s. 10.)

§ 106-568.28. Right of farmers dissatisfied with assessments; time for demanding refund. — In the event any referendum authorized by this Article is carried in the affirmative by such two-thirds vote and the assessment is levied and collected as herein provided and under the regulations to be promulgated by the board of directors of Tobacco Associates, Incorporated, any farmer or tobacco producer upon whom and against whom any such annual assessment shall have been levied and collected under the provisions of this Article, if dissatisfied with the said assessment, shall have the right to demand of and receive from the treasurer of said Tobacco Associates, Incorporated, a refund of such annual assessment so collected from such farmer or producer of tobacco, provided such demand for refund is made in writing within 30 days from the date on which said assessment is collected from such farmer or producer or

deducted from the proceeds of the sale of tobacco of such farmer or producer. (1959, c. 309, s. 11.)

§ 106-568.29. Subsequent referendum after defeat of assessment. — In the event any referendum conducted as provided for in this Article shall not be supported by two thirds or more of those voting therein, then the board of directors of Tobacco Associates, Incorporated shall have full power and authority to call another referendum for the purposes herein set forth in any succeeding year, on the question of an annual assessment for the next three years or less. If the referendum is carried as provided in this Article, then the assessments may be levied and collected as provided in this Article. (1959, c. 309, s. 12.)

§ 106-568.30. Referendum as to continuance of assessments approved at prior referendum. — In the event any referendum, held at any time under the provisions of this Article, is carried by the vote of two thirds or more of the eligible farmers participating therein and assessments in pursuance thereof are being levied annually, then the board of directors of Tobacco Associates, Incorporated shall, in its discretion, have full power and authority to call and conduct during the last year of such period another referendum in which the farmers and producers of flue-cured tobacco shall vote upon the question of whether or not assessments under this Article shall be continued for the next ensuing three years. If the referendum is carried as provided in this Article, then assessments may be levied and collected as provided in this Article. (1959, c. 309, s. 13.)

§ 106-568.31. Filing and publication of financial statement by treasurer of Tobacco Associates, Incorporated. — The treasurer of Tobacco Associates, Incorporated shall, within 30 days after the end of any fiscal year, file with the State Auditor a financial statement as of the end of the fiscal year and a detailed statement of operations for the year ended. Further a condensed statement of the financial condition and operating expenses for said fiscal year shall be published in a newspaper of general circulation, if one exists, in each county from which assessments are collected. (1959, c. 309, s. 14.)

§ 106-568.32. Levy of assessment for 1959, 1960 and 1961 authorized. — The board of directors of Tobacco Associates, Incorporated, by a vote (as provided in G.S. 106-568.27 above) is hereby authorized to levy an assessment for the years 1959, 1960 and 1961 on all the flue-cured tobacco acreage in the State of North Carolina in an amount for each said year, as may be determined by said board, up to but not in excess of one dollar ($1.00) per acre per year in accordance with and pursuant to a referendum and vote of North Carolina flue-cured tobacco growers held in December, 1958; said assessment to be levied and collected just as though said referendum had been held after the adoption of this Article, provided that all of the requirements of this Article as to the determination of the amount of the assessment and the collection of the assessment are complied with and provided further that all conditions of this Article as to refund upon demand shall be applicable: Provided further that such assessments for the years 1959, 1960 and 1961 shall be in lieu of the amount of ten cents (10¢) per acre, authorized under the provisions of Chapter 511 of the Session Laws of 1947. (1959, c. 309, s. 15.)

§ 106-568.33. Effect of Article on prior acts. — Insofar as the provisions of this Article are different from and in conflict with the provisions of Chapter 511, Session Laws of 1947 and Chapter 63, Session Laws of 1951, to the extent of such conflict the provisions of this Article shall be applicable and shall supersede and prevail over the provisions of said former acts and all provisions of this Article shall be in full effect. So long as assessments are made under this Article,

no assessment shall be made and collected under the provisions of Chapter 511, Session Laws of 1947, as amended. (1959, c. 309, s. 16.)

§ 106-568.34. Alternate method for levy of assessment. — At any time when it may be found by the board of directors of Tobacco Associates that it is not reasonably feasible to base the authorization of an assessment or the making of an assessment or the collection of an assessment on a "per-acre" unit, then the board of directors of Tobacco Associates, by an affirmative vote of not less than two thirds of its members (which vote shall include the affirmative vote of not less than two thirds of such board members who were elected by North Carolina farm organizations), may use a reasonably corresponding "tobacco poundage" unit as the basis for such authorization or making or collecting an assessment; provided, that no assessment shall exceed five cents (5¢) per 100 pounds of the effective farm marketing quota of a member. (1973, c. 81.)

ARTICLE 51.

Inspection and Regulation of Sale of Antifreeze Substances and Preparations.

§ 106-569. Definitions. — When used in this Article, unless the context or subject matter otherwise requires:

(1) The term or word "antifreeze" shall include all substances and preparations intended for use as the cooling medium, or to be added to the cooling liquid, in the cooling system of internal combustion engines to prevent freezing of the cooling liquid or to lower its freezing point.

(2) The term "person," as used in this Article, shall be construed to mean both the singular and plural as the case demands, and shall include individuals, partnerships, corporations, companies and associations. (1949, c. 1165.)

§ 106-570. Adulteration; what constitutes. — An antifreeze shall be deemed to be adulterated:

(1) If it consists in whole or in part of any substance which will render it injurious to the cooling system of an internal combustion engine or will make the operation of the engine dangerous to the user.

(2) If its strength, quality, or purity falls below the standard of strength, quality, or purity under which it is sold.

(3) If it consists of, or is compounded with calcium chloride, magnesium chloride, sodium chloride, petroleum distillates or other chemicals or substances in quantities harmful to the cooling systems of internal combustion engines. (1949, c. 1165.)

§ 106-571. Misbranding; what constitutes. — An antifreeze shall be deemed to be misbranded:

(1) If its labeling is false or misleading in any particular.

(2) If in package form it does not bear a label containing the name and place of business of the manufacturer, packer, seller or distributor; and an accurate statement of quantity of the contents in terms of weight or measure, and they are not plainly and correctly stated on the outside of the package or container. (1949, c. 1165.)

§ 106-572. Inspection, analysis and permit for sale of antifreeze. — Before any antifreeze shall be sold, exposed for sale, or stored, packed or held with intent to sell within this State, a sample thereof may be inspected under the supervision of the State Chemist in the Department of Agriculture, created by Chapter 106 of the General Statutes. Upon application of the manufacturer,

packer, seller or distributor and the payment of license or inspection fee of twenty-five dollars ($25.00) for each brand or type of antifreeze submitted, the State Chemist shall subject to inspection or analysis the antifreeze so submitted. If the antifreeze is not adulterated or misbranded, if it meets the standards established and promulgated by the North Carolina State Board of Agriculture, established by Chapter 106 of the General Statutes, and if the said antifreeze is not such a type or kind that is in violation of this Article, the Commissioner of Agriculture shall give the applicant a written license or permit authorizing the sale of such antifreeze in this State for the fiscal year in which the license or inspection fee is paid, which license or permit shall be subject to renewal annually. If the Commissioner of Agriculture shall, at a later date, find that the antifreeze product or substance to be sold, exposed for sale or held with intent to sell has been materially altered or adulterated, or a change has been made in the name, brand or trademark under which the antifreeze is sold, or that it violates the provisions of this Article, the Commissioner of Agriculture shall notify the applicant and the license or permit shall be canceled forthwith. No license or permit for the sale of antifreeze in this State shall be issued until application has been made as provided by this Article and such samples of the product as may be required by the State Chemist to qualify it have been submitted and until the State Chemist notifies the Commissioner of Agriculture that said antifreeze meets the requirements of this Article. (1949, c. 1165.)

§ 106-573. Article to be administered by the Commissioner of Agriculture. — The Commissioner of Agriculture shall administer and enforce the provisions of this Article by inspections, chemical analysis, or any other appropriate methods. All quantities or samples of antifreeze submitted for inspection or analysis shall be taken from stocks in this State or intended for sale in this State, or the Commissioner of Agriculture, through his agents, may call upon the manufacturer or distributor applying for an inspection of antifreeze to supply such sample thereof for analysis. The Commissioner of Agriculture, through his agents or inspectors, shall have free access during business hours to all places of business, buildings, vehicles, cars and vessels used in the manufacture, transportation, sale or storage of any antifreeze, and the Commissioner of Agriculture, acting through his agents, may open any box, carton, parcel, package or container holding or containing or supposed to contain any antifreeze and may take therefrom samples for analysis. If it appears that any of the provisions of this Article have been violated, the Commissioner of Agriculture, acting through his authorized agents, inspectors or representatives, is hereby authorized to issue a "stop-sale" order which shall prohibit further sale of any antifreeze being sold, exposed for sale or held with intent to sell within this State in violation of this Article, until the law has been complied with or said violation has otherwise been legally disposed of. Any antifreeze not in compliance with the provisions of this Article shall be subject to seizure upon complaint of the Commissioner of Agriculture or any of his agents, inspectors or representatives to a court of competent jurisdiction in the area in which said antifreeze is located. In the event the court finds said antifreeze to be in violation of this Article, it may order the condemnation of said antifreeze, and the same shall be disposed of in any manner consistent with the rules and regulations of the Board of Agriculture and the laws of the State: Provided, that in no instance shall the disposition of said antifreeze be ordered by the court without first giving the claimant or owner of same an opportunity to apply to the court for the release of said antifreeze or for permission to process or relabel said antifreeze so as to bring it into compliance with this Article. In case any "stop-sale" order shall be issued under the provisions of this Article, the agents, inspectors or representatives of the Commissioner of Agriculture shall release the antifreeze so withdrawn from sale when the requirements of the provisions of this Article

have been complied with and upon payment of all costs and expenses incurred in connection with the withdrawal. (1949, c. 1165.)

§ 106-574. Rules and regulations. — The Board of Agriculture shall have authority to establish and promulgate such rules and regulations and standards as are necessary to promptly and efficiently enforce the provisions of this Article. The Commissioner of Agriculture shall administer this Article and shall execute all orders, rules and regulations established by the Board of Agriculture. All authority vested in the Commissioner of Agriculture by virtue of the provisions of this Article may, with like force and effect, be executed by such employees, agents, inspectors and representatives of the Commissioner of Agriculture as he may, from time to time, designate for such purpose. The Commissioner of Agriculture may publish or furnish, upon request, a list of the brands and classes or types of antifreeze inspected by the State Chemist during the fiscal year which have been found to be in accord with this Article and for which a license or permit for sale has been issued, and it shall be lawful for any manufacturer, packer, seller, or distributor of antifreeze to show, by advertising, in any manner, that his or its brand of antifreeze has been inspected, analyzed and licensed for sale by the Commissioner of Agriculture, acting through the State Chemist. It shall be unlawful for any manufacturer, packer, seller, or distributor of antifreeze to advertise, in any manner, that such antifreeze so advertised for sale has been approved by the Commissioner of Agriculture. (1949, c. 1165.)

§ 106-575. Gasoline and oil inspectors may be designated as agents of the Commissioner. — The Commissioner of Agriculture, with the approval of the Commissioner of Revenue, may designate any or all of the gasoline and oil inspectors appointed under Article 3 of Chapter 119 of the General Statutes as agents and representatives of the Commissioner of Agriculture for the purposes of administering and carrying out the duties imposed by this Article. All or any gasoline and oil inspectors designated as agents of the Commissioner of Agriculture pursuant to this section shall have all of the power and authority that may be delegated to them by the Commissioner of Agriculture for the enforcement of this Article; and when acting in the enforcement of this Article, such gasoline and oil inspectors shall be deemed to be agents and representatives of the Commissioner of Agriculture. (1949, c. 1165.)

§ 106-576. Submission of formula or chemical contents of antifreeze to the Commissioner. — When any manufacturer, packer, seller or distributor of antifreeze applies to the Commissioner of Agriculture for a license or permit to sell antifreeze in this State, the Commissioner of Agriculture may require such manufacturer, packer, seller, or distributor to furnish the State Chemist a statement of the formula or contents of such antifreeze, which said statement shall conform to rules and regulations established by the Board of Agriculture: Provided, that the statement or [of] formula or contents need not include the inhibitor ingredients if such inhibitor ingredients total less than five percent (5%) by weight of the antifreeze and if in lieu thereof the manufacturer, packer, seller or distributor furnishes the State Chemist with satisfactory evidence, other than by disclosure of the inhibitor ingredients, that the said antifreeze is in conformity with the provisions of G.S. 106-570. All statements of contents, formulae or trade secrets furnished under this section shall be privileged and confidential and shall not be made public or open to the inspection of any person, firm, association or corporation other than the State Chemist. All such statements of contents shall not be subject to subpoena nor shall the same be exhibited or disclosed before any administrative or judicial tribunal by virtue of any order or subpoena of such tribunal unless with the consent of the person, firm, association or corporation owning and/or furnishing to the State Chemist such statement of contents. (1949, c. 1165.)

§ 106-577. Penalties for violation. — Any person, firm, association or corporation violating or failing to comply with any of the provisions of this Article, or any rule, regulation or standard issued pursuant thereto, shall be deemed guilty of a misdemeanor, and upon plea of guilty or conviction shall be punished in the discretion of the court, and each day that any violation of this Article shall exist shall be deemed to be a separate offense. Whenever the Commissioner of Agriculture or his agents or representatives shall discover that any antifreeze is being sold or has been sold in violation of this Article, the Commissioner of Agriculture or his agent or representative may furnish the facts to the district attorney or prosecuting officer of the court having jurisdiction in the area in which such violation occurred, and it shall be the duty of such prosecuting officer or district attorney to promptly institute proper legal proceedings. (1949, c. 1165; 1973, c. 47, s. 2.)

Editor's Note. — The 1973 amendment substituted "district attorney" for "solicitor" in the last sentence.

§ 106-578. Appropriation for enforcement of Article. — All license or permit fees provided for in this Article shall be collected by the Commissioner of Agriculture, deposited in the Department of Agriculture fund, of which the State Treasurer is custodian, and shall be expended for the administration and enforcement of this Article. The Commissioner of Agriculture is hereby authorized to employ such number of agents, clerks and experts as may be necessary to administer and effectively enforce all of the provisions of this Article. There shall, from time to time, be allotted by the Budget Bureau from the inspection fees collected under G.S. 119-18 such sums as may be necessary to administer and effectively enforce the provisions of this Article. (1949, c. 1165.)

Editor's Note. — All of the functions, property, records, etc., of the Budget Bureau have been transferred by § 143-344 to the Department of Administration.

§ 106-579. Copy of analysis in evidence. — A copy of the analysis made by any chemist of the Department of Agriculture of antifreeze certified to by him shall be admitted as evidence in any court of the State on trial of any issue involving the merits of antifreeze as defined and covered by this Article. (1949, c. 1165.)

ARTICLE 52.

Agricultural Development.

§ 106-580. Short title. — This Article may be cited as the "Agricultural Development Act." (1959, c. 1177, s. 1.)

§ 106-581. Intent and purpose. — It is hereby declared to be the intent and purpose of this Article to provide for a plan of assistance to the farmers and other citizens of this State in increasing agricultural income by making available to the various counties of the State the full resources of the Agricultural Extension Service, and other facilities, within the said counties, by means of the Farm and Home Development Program and the Rural Development Program as authorized by Title 7, United States Code, and other existing agricultural agencies. (1959, c. 1177, s. 2.)

§ 106-582. Counties authorized to utilize facilities to promote programs. — The several counties of this State are hereby authorized to utilize the facilities of existing extension and other agricultural advisory committees for the purpose of installing and promoting the Farm and Home Development Program and/or the Rural Development Program, or other program within the purview of this Article, in the said counties; or, the several counties may, within their discretion, with the cooperation of the Agricultural Extension Service, create such new additional committees as may be needed for this purpose. (1959, c. 1177, s. 3.)

§ 106-583. Policy of State; cooperation of departments and agencies with Agricultural Extension Service. — It is declared to be the policy of the State of North Carolina to promote the efficient production and utilization of the products of the soil as essential to the health and welfare of our people and to promote a sound and prosperous agriculture and rural life as indispensable to the maintenance of maximum prosperity. For the attainment of these objectives the North Carolina Department of Agriculture, the School of Agriculture of North Carolina College and each and every other department and agency of the State of North Carolina is hereby empowered to cooperate with the Agricultural Extension Service and the committees authorized by this Article to provide: Development of new and improved methods of production, marketing, distribution, processing and utilization of plant and animal commodities at all stages from the original producer through to the ultimate consumer; development of present, new, and extended uses and markets for agricultural commodities and by-products as food or in commerce, manufacture or trade; introduction and breeding of new and useful agricultural crops, plants and animals, particularly those plants and crops which may be adapted to utilization in chemical and manufacturing industries; research, counsel and advice on new and more profitable uses of our resources of agricultural manpower, soils, plants, animals and equipment than those to which they are now devoted; methods of conservation, development, and use of land, forest, and water resources for agricultural purposes; guidance in the design, development, and more efficient and satisfactory use of farm buildings, farm homes, farm machinery, including the application of electricity, water and other forms of power; techniques relating to the diversification of farm enterprises, both as to the type of commodities produced, and as to the types of operations performed, on the individual farm; and assistance in appraising opportunities for making fuller use of the natural, human and community resources in the various counties of this State to the end that the income and level of living of rural people be increased. (1959, c. 1177, s. 4.)

Cross Reference. — For designation of North Carolina State College of Agriculture and Engineering as North Carolina State University at Raleigh, see § 116-2.

§ 106-584. Maximum use of existing research facilities. — In effectuating the purposes of this Article, maximum use may be made of existing research facilities owned or controlled by the State of North Carolina or by the federal government and of the facilities of the State and federal extension services. (1959, c. 1177, s. 5.)

§ 106-585. Appropriations by counties; funds made available by Congress. — The several counties of this State are hereby authorized to make such appropriations and expend such funds as shall be necessary to defray any part of the expenses of the programs authorized by this Article, including the salaries of the extension agents, special agents and other necessary personnel, and any funds made available by the Congress of the United States for this purpose may be accepted and used therefor. (1959, c. 1177, s. 6.)

§ 106-586. Authority granted by Article supplementary. — The authority granted by this Article is in addition to that granted to the Extension Service by the Congress of the United States and in no way infringes upon the administrative authority of the director of the Extension Service or the existing policies of the Extension Service. (1959, c. 1177, s. 7.)

§ 106-587. Local appropriations. — Each county and city in this State is authorized to make appropriations for the purposes of this Article and to fund them by levy of property taxes pursuant to G.S. 153A-149 and G.S. 160A-209 and by the allocation of other revenues whose use is not otherwise restricted by law. (1959, c. 1177, s. 8; 1973, c. 803, s. 10.)

Editor's Note. — The 1973 amendment rewrote this section.

§§ 106-588 to 106-600: Reserved for future codification purposes.

ARTICLE 53.

Grain Dealers.

§ 106-601. Definitions. — (a) "Cash buyer" means any grain dealer who pays the producer, or his representative at the time of obtaining title, possession or control of grain, the full agreed price of such grain in coin or currency, lawful money of the United States, certified checks, cashier's checks or drafts issued by a bank.

(b) "Commissioner" means the North Carolina Commissioner of Agriculture.

(c) "Department" means the North Carolina Department of Agriculture.

(d) "Grain" as used herein shall be construed to include, but not by way of limitation, corn, wheat, rye, oats, sorghum, barley, mixed grain and soybeans.

(e) "Grain dealer" means any person owning, controlling or operating an elevator, mill, warehouse or other similar structure or truck or tractor-trailer unit or both who buys, solicits for sale or resale, processes for sale or resale, contracts for storage or exchange, or transfers grain of a North Carolina producer. The term "grain dealer" shall exclude producers or groups of producers buying grain for consumption on their farms.

(f) "Person" means an individual, partnership, corporation, association, syndicate or other legal entity.

(g) "Producer" means the owner, tenant or operator of land in this State who has an interest in and receives all or any part of the proceeds from the sale of the grain produced thereon. (1973, c. 665, s. 1.)

A Person Who Hauls Grain of a Producer without a Transfer of Title of the Grain Is Not Required to Be Licensed under This Article. — See opinion of Attorney General to Mr. James A. Graham, Commissioner of Agriculture, 43 N.C.A.G. 404 (1974).

§ 106-602. License required. — No person shall act or hold himself out as a grain dealer without first having obtained a license as herein provided. (1973, c. 665, s. 2.)

§ 106-603. Application for license or renewal thereof. — Every grain dealer before transacting business within the State of North Carolina shall on or before July 1, 1974, and annually on or before June 15 of each year thereafter, file a written application for a license or for the renewal of a license with the Commissioner. The application shall be on a form furnished by the Commissioner and shall contain the following information:

(1) The name and address of the applicant and that of its local agent or agents, if any, and the location of its principal place of business within this State.

(2) The kinds of grain the applicant proposes to handle.

(3) The type of grain business proposed to be conducted. (1973, c. 665, s. 3.)

§ 106-604. License fee; bond required; exemption. — All applications shall be accompanied by an initial or renewal license fee of twenty-five dollars ($25.00) plus twenty dollars ($20.00) per certificate or decal for each separate buying station or truck and a good and sufficient bond in the amount of ten thousand dollars ($10,000) to satisfy the initial license application. A fee of one dollar ($1.00) shall be charged for each duplicate license, certificate or decal. "Cash buyers" upon written request to the Commissioner showing proof satisfactory to the Commissioner that the person is a "cash buyer" under this Article shall be exempted from bonding requirements hereunder. The exemption shall be granted within 20 days of the receipt of the exemption request or unless the Commissioner requests the dealer to provide additional necessary information or unless the request is denied. (1973, c. 665, s. 4.)

§ 106-605. Execution, terms and form of bond; action on bond; investigation of complaints. — Such bond shall be made payable to the State of North Carolina with the Commissioner as trustee and shall be conditioned upon the grain dealer's faithful performance of his duties as a grain dealer and his compliance with this Article and shall be for the use and benefit of any producer from whom the grain dealer may purchase or store grain and who is not paid by such grain dealer, and shall not be canceled during the period for which the license is issued except upon 30 days' notice in writing to the Department. The liability of the surety of any bond required by the provisions of this Article shall not accumulate for each successive license period and the aggregate liability of the surety shall not exceed the face amount of the bond. Any producer claiming to be injured by the nonpayment, fraud, deceit or negligence of any dealer may bring action in the superior court of the county of residence of the producer therefor upon the bond within 120 days of the date of delivery of such grain to the dealer. The producer may notify the Commissioner in writing, by certified mail when possible, of such failure or refusal within the 120-day period unless contracted otherwise, or 10 days thereafter. In the event the Commissioner receives written complaint from an alleged injured producer of nonpayment, fraud, deceit or negligence of a dealer, the Commissioner may investigate such complaint and make recommendations to the surety company relative to the culpability or nonculpability of the dealer and the extent thereof. (1973, c. 665, s. 5.)

§ 106-606. Posting of license; decal on truck, etc. — The grain dealer license shall be posted in a conspicuous place in the place of business. In the case of a licensee operating a truck or tractor-trailer unit, the licensee is required to have a decal that the license is in effect and that a bond has been filed, such decal to be carried in each truck or tractor-trailer unit used in connection with the purchase of grain from producers. (1973, c. 665, s. 6.)

§ 106-607. Renewal of license. — Licenses shall be renewed upon application and payment of renewal fees on or before the fifteenth day of June following the date of expiration of any license hereunder issued. Applications received after June 15 of any year shall be subject to a late filing fee of ten dollars ($10.00) in addition to other applicable fees. (1973, c. 665, s. 7.)

§ 106-608. Disposition of fees. — All fees payable under this Article shall be collected by the North Carolina Department of Agriculture for the administration of this Article. (1973, c. 665, s. 8.)

§ 106-609. Records to be kept by dealers. — It shall be the duty of every person doing business as a grain dealer in this State to keep records of grain transactions for reasonable periods of time and in accordance with good business practices. (1973, c. 665, s. 9.)

§ 106-610. Grounds for refusal, suspension or revocation of license. — The Commissioner may refuse to grant or renew license, may suspend or may revoke any license upon a showing by substantial and competent evidence that:

(1) The dealer has suffered a final money judgment to be entered against him and such judgment remains unsatisfied; or
(2) The dealer has failed to promptly and properly account and pay for grain; or
(3) The dealer has failed to keep and maintain business records of his grain transactions as required herein; or
(4) The dealer has engaged in fraudulent or deceptive practices in the transaction of his business as a dealer; or
(5) The dealer has failed to collect from a producer and remit to the Commissioner of Agriculture such assessments as have been approved by the producers and are required to be collected under the provisions of Article 50 of Chapter 106 of the General Statutes; or
(6) The dealer or applicant has been convicted, pled guilty or nolo contendere within three years in any state or federal court of a crime involving moral turpitude. (1973, c. 665, s. 10.)

§ 106-611. Procedure for refusal, suspension or revocation of license. — Before the Commissioner or his duly authorized representative shall refuse an initial or renewal license or revoke a license, he shall give at least 10 days' actual notice or notice by registered mail to the applicant or licensee of the time and place of hearing. At such hearing, the applicant or licensee shall be privileged to appear in person, or with counsel and to produce witnesses.

At the time and place fixed, the Commissioner or his designated representative shall proceed to hear the matter and any charges made and both the applicant or licensee and any complainant shall be accorded ample opportunity to present in person or by counsel such statements, testimony, evidence and arguments as may be pertinent to the matter or charges or to any defense thereto. The Commissioner or his designated representative may continue such hearings from time to time. The hearing shall be reduced to writing.

The Commissioner is authorized to issue subpoenas and to bring before him or his designated representative any person or persons in this State and to take testimony either orally or by deposition or by exhibit with the same fees and mileage and in the same manner as prescribed by law in judicial proceedings and civil cases in the superior courts of this State.

The Commissioner is authorized to issue subpoenas on any or all records relating to a grain dealer's business. The Commissioner or his designee may administer oaths to witnesses at any hearing that the Department is authorized by law to conduct. If the Commissioner or his designee shall find the applicant or licensee guilty of any act provided in G.S. 106-610, the Commissioner may refuse, suspend or revoke such license and shall give immediate notice to the applicant or licensee.

No suspension shall be for a longer period than one year.

No person whose license has been revoked shall be eligible to receive another license until at least two years have elapsed from the date of the order of revocation, or if appealed, two years from the final judgment sustaining such revocation.

Any person aggrieved by an order denying, suspending or revoking a license may appeal to the Superior Court of Wake County and the procedure for such appeal shall be exclusively governed by the provisions of Chapter 150[A] of the General Statutes. (1973, c. 611, s. 11; c. 1331, s. 3.)

Editor's Note. — Pursuant to Session Laws 1973, c. 1331, s. 3, effective July 1, 1975, the reference to Chapter 150[A] has been substituted for a reference to Chapter 150 near the end of the section.

§ 106-612. Commissioner's authority to investigate. — In furtherance of any such investigation, inspection or hearing, the Commissioner or his duly authorized agent shall have full authority to make any and all necessary investigations relative to the complaint or matter being investigated; and they shall have free and unimpeded access during normal business hours to all buildings, yards, warehouses, storage and transportation facilities in which grain is kept, stored, handled, or transported, or where records of grain transactions are kept. (1973, c. 665, s. 12.)

§ 106-613. Rules and regulations. — The Board of Agriculture may adopt such rules and regulations as may be necessary to carry out the administration and enforcement of this Article. (1973, c. 665, s. 13.)

§ 106-614. Violation a misdemeanor. — Any person who violates any provision of this Article or any rule or regulation of the Board of Agriculture promulgated hereunder shall be guilty of a misdemeanor and upon conviction thereof fined not less than one hundred dollars ($100.00) nor more than five hundred dollars ($500.00) or imprisoned for not more than 60 days, or both fined and imprisoned. In case of a continuing violation or violations, each day and each violation occurring constitutes a separate and distinct offense. (1973, c. 665, s. 14.)

§ 106-615. Operation without license unlawful; injunction for violation. — It shall be unlawful for any person to be a grain dealer without securing a license as herein provided. In addition to the criminal penalties provided for herein, the Commissioner of Agriculture may apply to any superior court judge and the court may temporarily restrain or preliminarily or permanently enjoin any violation of this Article. (1973, c. 665, s. 15.)

Chapter 107.

Agricultural Development Districts.

§§ 107-1 to 107-25: Repealed by Session Laws 1971, c. 780, s. 20.

Cross Reference. — See the note catchlined "Revision of Chapter" following the analysis to Chapter 159.

Chapter 108.

Social Services.

Article 1.

Administration.

Part 1. The State Board of Social Services.

Sec.
108-1 to 108-4. [Repealed.]

Part 2. The Department of Social Services.

108-5, 108-6. [Repealed.]

Part 3. County Boards of Social Services.

108-7. Creation.
108-8. Size.
108-9. Method of appointment; residential qualifications; fee or compensation for services.
108-10. Term of appointment.
108-11. Order of appointment.
108-12. Vacancies.
108-13. Meetings.
108-14. Compensation of members.
108-15. Duties and responsibilities.
108-16. Inspection of records by members.

Part 4. County Director of Social Services.

108-17. Appointment.
108-18. Salary.
108-19. Duties and responsibilities.

Part 5. Special County Attorneys for Social Service Matters.

108-20. Appointment.
108-21. Compensation.
108-22. Duties and responsibilities.

Article 2.

Programs of Public Assistance.

108-23. Creation of programs.
108-24. Definitions.
108-24.1. Certain financial assistance and in-kind goods not considered in determining assistance paid under Chapters 108 and 111.

Part 1. Aid to the Aged and Disabled.

108-25. Eligibility requirements.
108-26. Determination of disability.
108-27. Direct payments for nursing and custodial care.
108-28. Limitations on payments.
108-29 to 108-37.1. [Repealed.]

Part 2. Aid to Families with Dependent Children.

108-38. Eligibility requirements; certain contributions to be disregarded.
108-39. Limitations on eligibility.
108-39.1. Work incentive program adopted; evidence of refusal to participate in special work projects; protective and vendor payments.

Part 3. The Administration of Aid to the Aged and Disabled and Aid to Families with Dependent Children.

108-40. Application for assistance.
108-41. Investigation of applicant.
108-42. Granting or denial of assistance.
108-43. Reconsideration of grants.
108-44. Appeals.
108-45. Confidentiality of records.
108-46. Removal to another county.
108-47. Assistance not assignable; checks payable to decedents.
109-48. Fraudulent misrepresentation.
108-49. Personal representative for mismanaged grants.
108-50. Protective and vendor payments.

Part 4. Financing Aid to the Aged and Disabled and Aid to Families with Dependent Children.

108-51. Acceptance of grants-in-aid.
108-52. Transfer of funds to counties.
108-53. Allocation of nonfederal shares.
108-54. Determination of county expenditures.
108-55. Determination of administrative expenses.
108-56. Counties to levy taxes.
108-57. Appropriations not to revert.
108-58. Equalizing fund.

Part 5. Medical Assistance.

108-59. State fund created.
108-60. Payments from fund.
108-61. Acceptance of federal grants.
108-61.1. [Repealed.]
108-61.2. Subrogation rights; withholding of information a misdemeanor.

Part 6. General Assistance.

108-62. Purpose and eligibility.
108-63. Application procedure.
108-64. State funds to counties.
108-65. Participation permissive.

Part 7. Foster Home Fund.

108-66. State Foster Home Fund.

Article 3.

Inspection and Licensing Authority.

Part 1. Licensing of Public Solicitation.

108-67. Definitions.
108-68. Licenses required.
108-69. Licensing procedure.
108-70. Appeal procedure.
108-71. Annual financial reports.

Sec.
108-72. Authorization of individual solicitors.
108-73. Exemptions from licensing requirement.
108-74. Solicitation for individual livelihood.
108-75. Penalties for violations.

Part 2. Licensing of Private Institutions.

108-76. Licensing of maternity homes.
108-77. Licensing of homes for the aged and infirm.
108-78. Licensing of private child-caring institutions.

Part 3. Local Confinement Facilities.

108-79. Inspection.
108-80. Approval of new facilities.
108-81. Failure to provide information.
108-82 to 108-86. [Repealed.]
108-87 to 108-90. [Reserved.]

Article 4.

Protection of the Abused or Neglected Elderly Act.

108-91. Short title.
108-92. Legislative intent and purpose.
108-93. Definitions.
108-94. Duty to report.
108-95. Duty of director upon receiving report.
108-96. Provision of protective services with the consent of the person.
108-97. Provision of protective services to elderly persons who do not have the capacity to consent.
108-98. Motion in the cause.
Sec.
108-99. Utilization of available services.
108-100. Privilege for confidential communications.
108-101. Payment for protective services.
108-102 to 108-106. [Reserved.]

Article 5.

Family Food Assistance Program.

108-107. Creation of food-stamp program.
108-108. Determination of eligibility.
108-109. Appeals.
108-110. Penalties for false representation.
108-111 to 108-115. [Reserved.]

Article 6.

Economic Opportunity Agencies.

108-116. Purpose.
108-117. Definitions.
108-118. Designation of administering agency; powers and responsibilities.
108-119. Eligibility for State financial assistance.
108-120. Allocation of State financial assistance.
108-121. Authority for State departments to contract with or make grants to eligible economic opportunity agencies.
108-122. Eligibility for local government assistance.
108-123. Local government control.

Editor's Note. — Session Laws 1973, c. 476, s. 138, subsection (1), provides that whenever the words "State Board of Social Services" and "State Board" are used or appear in any statute or law of this State, the same shall be deleted and the words "Department of Human Resources" or "Department," as appropriate, shall be substituted, unless otherwise provided in the act. Session Laws 1973, c. 476, s. 138, subsection (2), provides that whenever the words "Commissioner for Social Services" or "Commissioner," when referring to the Commissioner for Social Services, appear in any statute or law of this State, the same shall be deleted and the words "Secretary of Human Resources" or "Secretary," as appropriate, shall be substituted, unless otherwise provided in the act. Session Laws 1973, c. 476, s. 138, subsection (3), provides that whenever the words "North Carolina State Department of Social Services" are used or appear in any statute or law of this State, the same shall be deleted and the words "Department of Human Resources" or "Department," as appropriate, shall be substituted, unless otherwise provided in the act. In this Chapter as it stood at the time of passage of the 1973 act, the State Board of Social Services was occasionally referred to simply as the "Board of Social Services," and the title of the Commissioner was "Commissioner of Social Services." The words "North Carolina State Department of Social Services" did not appear anywhere in the Chapter, the Department being usually referred to as the "State Department of Social Services," and occasionally as the "State Department." In order to give effect to the obvious intent of the 1973 act, references to the Department and Secretary of Human Resources have been substituted for references to the State Department, Board and Commissioner of Social Services throughout this Chapter and elsewhere in the General Statutes, notwithstanding the fact that in a number of instances the precise titles quoted in the 1973 act were not used in the sections so treated as amended.

ARTICLE 1.

Administration.

Part 1. The State Board of Social Services.

§§ 108-1 to 108-4: Repealed by Session Laws 1973, c. 476, s. 138.

Cross Reference. — As to the Social Services Commission, see §§ 143B-153 to 143B-156.

Editor's Note. — Repealed § 108-4 was amended by Session Laws 1973, c. 717, s. 2.

Part 2. The Department of Social Services.

§§ 108-5, 108-6: Repealed by Session Laws 1973, c. 476, s. 138.

Part 3. County Boards of Social Services.

§ 108-7. Creation. — Every county shall have a board of social services which shall establish county policies for the programs established by this Chapter in conformity with the rules and regulations of the Social Services Commission and under the supervision of the Department of Human Resources. (1917, c. 170, s. 1; 1919, c. 46, s. 3; C. S., s. 5014; 1937, c. 319, s. 3; 1941, c. 270, s. 2; 1945, c. 47; 1953, c. 132; 1955, c. 249; 1957, c. 100, s. 1; 1959, c. 1255, s. 1; 1961, c. 186; 1963, c. 139; c. 247, ss. 1, 2; 1969, c. 546, s. 1; 1973, c. 476, s. 138.)

Editor's Note. — The 1973 amendment substituted "Social Services Commission" for "State Board of Social Services" and "Department of Human Resources" for "State Department of Social Services."

§ 108-8. Size. — The county board of social services in each county shall consist of three members, except that the board of commissioners of any county may increase such number to five members. The decision to increase the size to five members or to reduce a five-member board to three shall be reported immediately in writing by the chairman of the board of commissioners to the Department of Human Resources. (1917, c. 170, s. 1; 1919, c. 46, s. 3; C. S., s. 5014; 1937, c. 319, s. 3; 1941, c. 270, s. 2; 1945, c. 47; 1953, c. 132; 1955, c. 249; 1957, c. 100, s. 1; 1959, c. 1255, s. 1; 1961, c. 186; 1963, c. 139; c. 247, ss. 1, 2; 1969, c. 546, s. 1; 1973, c. 476, s. 138.)

Editor's Note. — The 1973 amendment substituted "Department of Human Resources" for "State Department of Social Services."

§ 108-9. Method of appointment; residential qualifications; fee or compensation for services. — (a) Three-Member Board: The board of commissioners shall appoint one member who may be a county commissioner or a citizen selected by the board; the Social Services Commission shall appoint one member; and the two members so appointed shall select the third member. In the event the two members so appointed are unable to agree upon selection of the third member, the senior regular resident superior court judge of the county shall make the selection.

(b) Five-Member Board: The procedure set forth in subsection (a) shall be followed, except that both the board of commissioners and the Social Services Commission shall appoint two members each, and the four so appointed shall

select the fifth member. If the four are unable to agree upon the fifth member, the senior regular resident superior court judge of the county shall make the selection.

(c) Provided further that each member so appointed under subsection (a) and subsection (b) of this section by the Social Services Commission and by the county board of commissioners or the senior regular resident superior court judge of the county, shall be bona fide residents of the county from which they are appointed to serve, and will receive as their fee or compensation for their services rendered from the Department of Human Resources directly or indirectly only the fees and compensation as provided by G.S. 108-14. (1917, c. 170, s. 1; 1919, c. 46, s. 3; C. S., s. 5014; 1937, c. 319, s. 3; 1941, c. 270, s. 2; 1945, c. 47; 1953, c. 132; 1955, c. 249; 1957, c. 100, s. 1; 1959, c. 1255, s. 1; 1961, c. 186; 1963, c. 139; c. 247, ss. 1, 2; 1969, c. 546, s. 1; 1971, c. 369; 1973, c. 476, s. 138.)

Editor's Note. — The 1973 amendment substituted "Social Services Commission" for "State Board of Social Services" in three places and "Department of Human Resources" for "Board of Social Services" in one place.

§ 108-10. Term of appointment. — Each member of a county board of social services shall serve for a term of three years. No member may serve more than two consecutive terms. (1917, c. 170, s. 1; 1919, c. 46, s. 3; C. S., s. 5014; 1937, c. 319, s. 3; 1941, c. 270, s. 2; 1945, c. 47; 1953, c. 132; 1955, c. 249; 1957, c. 100, s. 1; 1959, c. 1255, s. 1; 1961, c. 186; 1963, c. 139; c. 247, ss. 1, 2; 1969, c. 546, s. 1.)

§ 108-11. Order of appointment. — (a) Three-Member Board: The term of the member appointed by the Social Services Commission shall expire on June 30, 1969, and every three years thereafter; the term of the member appointed by the board of commissioners shall expire on June 30, 1971, and every three years thereafter; and the term of the third member shall expire on June 30, 1970, and every three years thereafter.

(b) Five-Member Board: Whenever a board of commissioners of any county decides to expand a three-member board to a five-member board of social services, the Social Services Commission shall appoint an additional member for a term expiring at the same time as the term of the existing member appointed by the board of commissioners, and the board of commissioners shall appoint an additional member for a term expiring at the same time as the term of the existing member appointed by the Social Services Commission. The change to a five-member board shall become effective at the time when the additional members shall have been appointed by both the county board of commissioners and the Social Services Commission. Thereafter all appointments shall be for three-year terms.

(c) Change from Five-Member to Three-Member Board: The change shall become effective on the first day of July following the decision to change by the board of commissioners. On that day, the following two seats on the board of social services shall cease to exist:

(1) The seat held by the member appointed by the Social Services Commission whose term would have expired on June 30, 1971, or triennially thereafter; and

(2) The seat held by the member appointed by the board of commissioners whose term would have expired on June 30, 1972, or triennially thereafter. (1917, c. 170, s. 1; 1919, c. 46, s. 3; C. S., s. 5014; 1937, c. 319, s. 3; 1941, c. 270, s. 2; 1945, c. 47; 1953, c. 132; 1955, c. 249; 1957, c. 100, s. 1; 1959, c. 1255, s. 1; 1961, c. 186; 1963, c. 139; c. 247, ss. 1, 2; 1969, c. 546, s. 1; 1973, c. 476, s. 138; c. 724, s. 1.)

Editor's Note. — The first 1973 amendment substituted "Social Services Commission" for "State Board of Social Services" in subsection (a) and in the first sentence of subsection (b) and for "State Board" at the end of the first sentence of subsection (b) and in subdivision (c)(1).

The second 1973 amendment added the second sentence of subsection (b).

§ 108-12. Vacancies. — Appointments to fill vacancies shall be made in the manner set out in G.S. 108-9. All such appointments shall be for the remainder of the former member's term of office and shall not constitute a term for the purposes of G.S. 108-10. (1917, c. 170, s. 1; 1919, c. 46, s. 3; C. S., s. 5014; 1937, c. 319, s. 3; 1941, c. 270, s. 2; 1945, c. 47; 1953, c. 132; 1955, c. 249; 1957, c. 100, s. 1; 1959, c. 1255, s. 1; 1961, c. 186; 1963, c. 139; c. 247, ss. 1, 2; 1969, c. 546, s. 1.)

§ 108-13. Meetings. — The board of social services of each county shall meet at least once per month or more often if a meeting is called by the chairman. Such board shall elect a chairman from its members at its July meeting each year, and the chairman shall serve a term of one year or until a new chairman is elected by the board. (1917, c. 170, s. 1; 1919, c. 46, s. 4; C. S., s. 5015; 1937, c. 319, s. 4; 1941, c. 270, s. 3; 1947, c. 92; 1959, c. 320; 1961, c. 186; 1969, c. 546, s. 1.)

§ 108-14. Compensation of members. — Members of the county board of social services may receive a per diem in such amount as shall be established by the county board of commissioners and travel expenses not to exceed the amounts provided by G.S. 138-5 for attendance at official meetings and conferences, provided such per diem or travel is authorized by the board of commissioners. (1917, c. 170, s. 1; 1919, c. 46, s. 4; C. S., s. 5015; 1937, c. 319, s. 4; 1941, c. 270, s. 3; 1947, c. 92; 1959, c. 320; 1961, c. 186; 1969, c. 546, s. 1; 1971, c. 124.)

Local Modification. — Columbus: 1973, c. 279.

§ 108-15. Duties and responsibilities. — The county board of social services shall have the following duties and responsibilities:

(1) To select the county director of social services according to the merit system rules of the State Personnel Board.
(2) To advise county and municipal authorities in developing policies and plans to improve the social conditions of the community.
(3) To consult with the director of social services about problems relating to his office, and to assist him in planning budgets for the county department of social services.
(4) To transmit or present the budgets of the county department of social services for public assistance and administration to the board of county commissioners.
(5) To have such other duties and responsibilities as the General Assembly or the Social Services Commission or the board of county commissioners may assign to it. (1917, c. 170, s. 1; 1919, c. 46, s. 3; C. S., s. 5014; 1937, c. 319, s. 3; 1941, c. 270, s. 2; 1945, c. 47; 1953, c. 132; 1955, c. 249; 1957, c. 100, s. 1; 1959, c. 1255, s. 1; 1961, c. 186; 1963, c. 139; c. 247, ss. 1, 2; 1969, c. 546, s. 1; 1973, c. 476, s. 138.)

Editor's Note. — The 1973 amendment substituted "Social Services Commission" for "State Board of Social Services."

§ 108-16. Inspection of records by members. — Every member of the county board of social services may inspect and examine any record on file in the office of the director relating in any manner to applications for and payments of public assistance authorized by this Chapter. No member shall disclose or make public any information which he may acquire by examining such records. (1917, c. 170, s. 1; 1919, c. 46, s. 3; C. S., s. 5014; 1937, c. 319, s. 3; 1941, c. 270, s. 2; 1945, c. 47; 1953, c. 132; 1955, c. 249; 1957, c. 100, s. 1; 1959, c. 1255, s. 1; 1961, c. 186; 1963, c. 139; c. 247, ss. 1, 2; 1969, c. 546, s. 1.)

Part 4. County Director of Social Services.

§ 108-17. Appointment. — (a) The board of social services of every county shall appoint a director of social services in accordance with the merit system rules of the State Personnel Board. Any director dismissed by such board shall have the right of appeal under the same rules.

(b) Two or more boards of social services may jointly employ a director of social services to serve the appointing boards and such boards may also combine any other functions or activities as authorized by G.S. 153-246. The boards shall agree on the portion of the director's salary and the portion of expenses for other joint functions and activities that each participating county shall pay. (1917, c. 170, s. 1; 1919, c. 46, ss. 3, 4; C. S., s. 5016; 1921, c. 128; 1929, c. 291, s. 1; 1931, c. 423; 1937, c. 319, s. 5; 1941, c. 270, s. 4, 1957, c. 100, s. 1; 1961, c. 186; 1969, c. 546, s. 1.)

Editor's Note. — Section 153-246, referred to in subsection (b), was repealed by Session Laws 1973, c. 822. For present provisions as to counties, see Chapter 153A.

§ 108-18. Salary. — The board of social services of every county shall determine the salary of the director in accordance with the classification plan of the State Personnel Board, and such salary shall be paid by the county from the federal, State and county funds available for this purpose. (1917, c. 170, s. 1; 1919, c. 46, ss. 3, 4; C. S., s. 5016; 1921, c. 128; 1929, c. 291, s. 1; 1931, c. 423; 1937, c. 319, s. 5; 1941, c. 270, s. 4; 1957, c. 100, s. 1; 1961, c. 186; 1969, c. 546, s. 1.)

County Commissioners May Set Salary of Director of Social Services at a Higher or Lower Level Than Set by Board of Social Services. — See opinion of Attorney General to Mr. James C. Fox, 41 N.C.A.G. 696 (1971).

§ 108-19. Duties and responsibilities. — The director of social services shall have the following duties and responsibilities:

(1) To serve as executive officer of the board of social services and act as its secretary.
(2) To appoint necessary personnel of the county department of social services in accordance with the merit system rules of the State Personnel Board.
(3) To administer the programs of public assistance established by this Chapter.
(4) To administer funds provided by the board of commissioners for the care of indigent persons in the county under policies approved by the county board of social services.
(5) To act as agent of the Social Services Commission in relation to work required by the Social Services Commission in the county.
(6) To investigate cases for adoption and to supervise adoptive placements.
(7) To issue employment certificates to children under the regulations of the State Department of Labor.

(8), (9) Repealed by Session Laws 1973, c. 1339, s. 2.

(10) To supervise boarding homes, rest homes and convalescent homes for aged or infirm persons, under the rules and regulations of the Social Services Commission.

(11) To investigate, prepare, and submit petitions for the sterilization of eligible county residents to the Eugenics Commission and to arrange for operations authorized by the said Commission.

(12) To assist and cooperate with the Department of Correction and the Department of Correction and their representatives.

(13) To keep informed of the condition of persons discharged from hospitals for the mentally ill.

(14) To investigate reports of child abuse and neglect and to take appropriate action to protect such children pursuant to the Child Abuse Reporting Law, Article 8 of Chapter 110 of the General Statutes.

(15) To accept children for placement in foster homes and to supervise placements for so long as such children require foster home care. (1917, c. 170, s. 1; 1919, c. 46, s. 3; C. S., s. 5017; 1941, c. 270, s. 5; 1957, c. 100, s. 1; 1961, c. 186; 1969, c. 546, s. 1; 1971, c. 710, s. 5; 1973, c. 476, ss. 133.3, 138; c. 1262, s. 109; c. 1339, s. 2.)

Cross Reference. — For present provisions as to juvenile services, see §§ 7A-289.1 through 7A-289.7.

Editor's Note. — The first 1973 amendment substituted "Social Services Commission" for "State Board of Social Services" and for "State Board" in subdivisions (5) and (10) and substituted "Eugenics Commission" for "Eugenics Board of North Carolina" and "Commission" for "Board" in subdivision (11).

The second 1973 amendment substituted "Department of Correction" for "Board of Paroles" and for "Probation Commission" in subdivision (12). The direction of the second 1973 amendatory act has been followed literally in subdivision (12) as set out above.

The third 1973 amendment repealed subdivisions (8), which required the director of social services to serve as chief probation officer for judges exercising juvenile jurisdiction in certain circumstances, and (9), which required the director to supervise children conditionally released from State institutions for juvenile delinquents in certain circumstances.

Part 5. Special County Attorneys for Social Service Matters.

§ 108-20. Appointment. — With the approval of the board of social services, the board of commissioners of any county may appoint a licensed attorney to serve as a special county attorney for social service matters, or designate the county attorney as special county attorney for social service matters. (1959, c. 1124, s. 1; 1961, c. 186; 1969, c. 546, s. 1.)

§ 108-21. Compensation. — The special county attorney for social service matters shall receive compensation for the performance of his duties and for his expenses in such amount as the board of commissioners may provide. His compensation shall be a proper item in the annual budget of the county department of social services. (1959, c. 1124, s. 1; 1961, c. 186; 1969, c. 546, s. 1.)

§ 108-22. Duties and responsibilities. — (a) The special county attorney shall have the following duties and responsibilities:

(1) To serve as legal advisor to the county director, the county board of social services, and the board of county commissioners on social service matters.

(2) To represent the county, the plaintiff, or the obligee in all proceedings brought under the Uniform Reciprocal Enforcement of Support Act and to exercise continuous supervision of compliance with any order entered in any proceeding under that act.

(3) To represent the county board of social services in appeal proceedings and in any litigation relating to appeals.
(4) To discharge the duties of the county attorney in respect to the lien created by G.S. 108-29, if such duties be assigned to him by the board of county commissioners with the consent and approval of the county attorney.
(5) To assist the district court prosecutor or superior court district attorney with the preparation and prosecution of criminal cases under Article 40 of Chapter 14 of the General Statutes, entitled "Protection of the Family."
(6) To assist the district court prosecutor or superior court district attorney with the preparation and prosecution of proceedings authorized by Chapter 49 of the General Statutes, entitled "Bastardy."
(7) To perform such other duties as may be assigned to him by the board of county commissioners, the board of social services, or the director of social services.

(b) In performing any of the duties and responsibilities set out in this section, the special county attorney is authorized to call upon any director of social services or the Department of Human Resources for any information as he may require to perform his duties, and such director and Department are directed to assist him in performing such duties. (1959, c. 1124, ss. 2, 3; 1969, c. 546, s. 1; 1973, c. 47, s. 2; c. 476, s. 138.)

Editor's Note. — The first 1973 amendment substituted "district attorney" for "solicitor" in subdivisions (5) and (6) of subsection (a).

The second 1973 amendment substituted "Department of Human Resources" for "State Department of Social Services" in subsection (b).

Section 108-29, referred to in subdivision (4) of subsection (a), was repealed by Session Laws 1973, c. 204, s. 1.

ARTICLE 2.

Programs of Public Assistance.

§ 108-23. Creation of programs. — The following programs of public assistance are hereby established, and shall be administered by the county departments of social services under rules and regulations adopted by the Social Services Commission and under the supervision of the Department of Human Resources:

(1) Aid to the aged and disabled;
(2) Aid to families with dependent children;
(3) General assistance;
(4) Medical assistance; and
(5) Foster home fund. (1937, c. 135, s. 1; c. 288, ss. 3, 31; 1949, c. 1038, s. 2; 1955, c. 1044, s. 1; 1957, c. 100, s. 1; 1965, c. 1173, s. 1; 1969, c. 546, s. 1; 1973, c. 476, s. 138.)

Editor's Note. — The 1973 amendment substituted "rules and regulations" for "policies," "Social Services Commission" for "State Board of Social Services" and "Department of Human Resources" for "State Department of Social Services," all in the introductory paragraph.

State Participation Is Voluntary. — Participation by the State in aid to families with dependent children is not required but voluntary; implementation is left to the states. Gilliard v. Craig, 331 F. Supp. 587 (W.D.N.C. 1971).

§ 108-24. Definitions. — As used in Article 2:

(1) "Applicant" is any person who requests assistance or on whose behalf assistance is requested.

(2) "Assistance" is money payments, medical care, remedial care, and goods or services, to or for eligible persons.

(3) "Dependent child" is a person under 18 years of age who is living with a natural parent, adoptive parent, stepparent, or any other person related by blood, marriage, or legal adoption, in a place of residence maintained by one or more of such persons as his or their own home, and who is deprived of parental support; it shall also include a minor who has been eligible for AFDC who is now living in a foster-care facility or child-caring institution.

(4) "Medical assistance" is any program of medical, dental, optometric or other health-related services approved by the Social Services Commission.

(5) "Permanently and totally disabled" is a person who has a physical or mental impairment which substantially precludes him from obtaining gainful employment, and such impairment appears reasonably certain to continue without substantial improvement throughout his lifetime.

(6) "Recipient" is a person to whom, or on whose behalf, assistance is granted under this Article.

(7) "Resident" is a person who has resided continuously within the State of North Carolina for at least one year prior to the date on which application for assistance to him is made with a county department of social services. (1937, c. 288, ss. 4, 32; 1939, c. 395, s. 1; 1949, c. 1038, s. 2; 1951, c. 1098, ss. 3, 4, 5; 1957, c. 100, ss. 1, 2; 1969, c. 546, s. 1; 1971, c. 1231, s. 1; 1973, c. 476, s. 138; c. 743.)

Editor's Note. — The first 1973 amendment substituted "Social Services Commission" for "State Board of Social Services" in subdivision (4).

The second 1973 amendment inserted "who has been eligible for AFDC who is now" near the end of subdivision (3).

Residency Requirement for Receipt of Welfare Benefits Unenforceable. — See opinion of Attorney General to Mr. Robert H. Ward, Assistant Commissioner, Department of Social Services, 40 N.C.A.G. 712 (1970).

§ 108-24.1. Certain financial assistance and in-kind goods not considered in determining assistance paid under Chapters 108 and 111. — Financial assistance and in-kind goods or services received from a governmental agency, or from a civic or charitable organization, shall not be considered in determining the amount of assistance to be paid any person under Chapters 108 and 111 of the General Statutes provided that such financial assistance and in-kind goods and services are incorporated in the rehabilitation plan of such person being assisted by the Division of Vocational Rehabilitation of the Department of Human Resources or the Vocational Rehabilitation Program of the Commission for the Blind. (1973, c. 716.)

Part 1. Aid to the Aged and Disabled.

§ 108-25. Eligibility requirements. — Assistance shall be granted to any person who:

(1) Is 65 years of age and older, or is between the ages of 18 and 65 and is permanently and totally disabled;

(2) Has insufficient income or other resources to provide a reasonable subsistence compatible with decency and health as determined by the rules and regulations of the Social Services Commission;

(3) Is a resident of North Carolina;
(4) Repealed by Session Laws 1973, c. 1407. (1937, c. 288, s. 6; 1939, c. 395, s. 1; 1941, c. 232; 1943, c. 753, s. 1; 1945, c. 615, ss. 1, 2; 1947, c. 91, s. 1; 1951, c. 1019, s. 1; 1953, c. 260; 1955, c. 237, s. 1; 1957, c. 1107; 1961, cc. 186, 967; 1963, cc. 788, 1085; 1969, c. 546, s. 1; 1973, c. 476, s. 138; c. 1407.)

Editor's Note. — The first 1973 amendment substituted "Social Services Commission" for "State Board of Social Services" in subdivision (2).

The second 1973 amendment repealed subdivision (4), requiring the recipient to agree in writing that the amount of assistance granted him should constitute a lien against his real property or a claim against his estate.

Residency Requirement for Receipt of Welfare Benefits Unenforceable. — See opinion of Attorney General to Mr. Robert H. Ward, Assistant Commissioner, Department of Social Services, 40 N.C.A.G. 712 (1970).

§ 108-26. Determination of disability. — (a) An applicant between the ages of 18 and 65 seeking assistance under this Part must be found to be permanently and totally disabled as defined in G.S. 108-24 by a physician or by a medical review board in his county of residence; such physician or board must submit any findings of disability to the county department of social services for transmittal to the Department of Human Resources.

(b) All applications for assistance as a permanently and totally disabled person shall be reviewed by medical consultants employed by the Department of Human Resources. The final decision on the disability factor shall be made by such medical consultants under rules and regulations adopted by the Social Services Commission. (1963, c. 788; 1969, c. 546, s. 1; 1973, c. 476, s. 138.)

Editor's Note. — The 1973 amendment substituted "Department of Human Resources" for "State Department of Social Services" in subsections (a) and (b) and "Social Services Commission" for "State Board of Social Services" in subsection (b).

§ 108-27. Direct payments for nursing and custodial care. — (a) The Department of Human Resources is authorized and empowered to make payments to duly licensed nursing homes or extended care facilities for persons eligible to receive assistance to the aged and disabled when nursing care is found to be essential for such persons by the Department of Human Resources under the rules and regulations of the Social Services Commission.

(b) The Department of Human Resources is authorized and empowered to make payments to family care homes, homes for the aged and intermediate care homes for persons eligible to receive assistance to the aged and disabled when such facilities are found to be essential for such persons by a county department of social services under the rules and regulations of the Social Services Commission.

(c) The Department of Human Resources is authorized and empowered to utilize funds available to the Department to increase the rates for licensed family care homes or homes for the aged, or payments made for this purpose to persons assigned by the Department to these homes, to offset the increased costs due to any additional increases in minimum wages required by federal or State laws after April 15, 1973. (1967, c. 1211, s. 2; 1969, c. 546, s. 1; 1973, c. 476, s. 138; c. 817.)

Editor's Note. — The first 1973 amendment substituted "Department of Human Resources" for "State Department" in two places in subsection (a) and in subsection (b) and substituted "Social Services Commission" for "State Board of Social Services" in subsections (a) and (b).

The second 1973 amendment added subsection (c).

Pursuant to Session Laws 1973, c. 476, s. 138, "Department of Human Resources" has been substituted for "State Department of Social Services" in subsection (c) as added by the second 1973 amendment.

§ 108-28. Limitations on payments. — No payment of public assistance derived from federal, State or local sources shall be made for the care of any person in a nursing home, home for the aged, family care home, or intermediate care home which is owned or operated in whole or in part by any of the following:

(1) A member of the Social Services Commission, of any county board of social services, or of any board of county commissioners;

(2) An official or employee of the Department of Human Resources or of any county department of social services;

(3) A spouse of a person designated in subdivisions (1) and (2). (1917, c. 170, s. 1; C. S., s. 5012; 1959, c. 715; 1965, c. 48; 1967, c. 983; 1969, c. 546, s. 1; 1973, c. 476, s. 138.)

Editor's Note. — The 1973 amendment substituted "Social Services Commission" for "State Board of Social Services" and "Department of Human Resources" for "State Department of Social Services."

§§ 108-29 to 108-37.1: Repealed by Session Laws 1973, c. 204, s. 1.

Editor's Note. — Session Laws 1973, c. 204, s. 2 provides: "This act shall not apply to any claims and liens created pursuant to G.S. 108-29 prior to the effective date of this act, and such claims and liens shall be entitled to full and complete enforcement as by law heretofore provided."

The Enforcement Provisions of the Repealed Sections Remain Applicable to Liens Created prior to April 16, 1973. — See opinion of Attorney General to Honorable Fred Folger, Jr., Senator, North Carolina General Assembly, 43 N.C.A.G. 328 (1974).

Transfer of Lien Created under Provisions of Repealed Sections prior to April 16, 1973, to Parcel of Realty Acquired by Public Assistance Recipient after April 16, 1973. — See opinion of Attorney General to Mr. W.W. Speight, 43 N.C.A.G. 249 (1973).

Part 2. Aid to Families with Dependent Children.

§ 108-38. Eligibility requirements; certain contributions to be disregarded. — (a) Assistance shall be granted to any dependent child, as defined in G.S. 108-24, who:

(1) Is a resident of the State or whose mother was a resident when the child was born;

(2) Has been deprived of parental support or care by reason of a parent's death, physical or mental incapacity, or continued absence from the home;

(3) Has no adequate means of support.

(b) Subject to the limitation hereafter set out in this subsection, in computing available income and resources under this Part with regard to determining eligibility for a grant of assistance for any one child, or for any two or more children living together in a family group, there shall be disregarded, for any calendar month, the first thirty dollars ($30.00) and one third of the excess over thirty dollars ($30.00) provided by any parent whose absence is one of the reasons for eligibility for his or her children. This subsection shall apply only to the extent that such payments are provided for under a court order or judgment, or contract, providing for such payments, a copy of which is on file with the county department of social services.

The provisions of this subsection shall cease to be effective in the event of and upon any final determination by the Secretary of Health, Education and Welfare that such provisions do not comply substantially with any provision required by federal law to be included in a State plan for aid and services to needy families with children. (1937, c. 288, s. 35; 1939, c. 395, s. 1; 1941, c. 232; 1945, c. 615, s. 1; 1961, c. 533; 1965, c. 939, s. 1; 1967, c. 660; 1969, c. 546, s. 1; 1973, c. 714, ss. 1-3; c. 826.)

Editor's Note. — The first 1973 amendment designated the former provisions of this section as subsection (a) and added subsection (b).

The second 1973 amendment added the second paragraph of subsection (b).

For note on illegitimacy in North Carolina, see 46 N.C.L. Rev. 813 (1968).

For note on the "man in the house" or "substitute parent" rule in determining eligibility for aid to dependent children, see 47 N.C.L. Rev. 228 (1968).

Infringement upon Right to Subsistence Is Deprivation of Personal Liberty. — Children have a right to subsistence and infringement upon that right is a deprivation of personal liberty which gives rise to a cause of action under 42 U.S.C. § 1983, and there is jurisdiction in a district court under 28 U.S.C. § 1343. Gilliard v. Craig, 331 F. Supp. 587 (W.D.N.C. 1971).

Residency Requirement for Receipt of Welfare Benefits Unenforceable. — See opinion of Attorney General to Mr. Robert H. Ward, Assistant Commissioner, Department of Social Services, 40 N.C.A.G. 712 (1970).

Eligibility of Children for Aid to Families with Dependent Children Although Parent Does Not Qualify as a Payee. — See opinion of Attorney General to Colonel Clifton M. Craig, Commissioner, Department of Social Services, 40 N.C.A.G. 652 (1970).

§ 108-39. Limitations on eligibility. — (a) No assistance shall be granted to any dependent child who:

(1) Has passed his sixteenth birthday and has the ability and capacity for gainful employment, unless he is regularly enrolled and attending school or unless no gainful employment is available, except that a dependent child over 16 years of age and attending school is not eligible for assistance during the summer months unless no gainful employment is available;

(2) Has passed his eighteenth birthday unless he is regularly attending and successfully pursuing (i) a course of study leading to a high school diploma or its equivalent, (ii) a course of study at the college level, or (iii) a course of vocational or technical training designed to fit him for gainful employment.

(b) No parent shall be made the payee of assistance granted under this Part who has the ability and capacity for gainful employment but who is not employed either on a part or full-time basis unless the parent is needed in the home to provide continuous care for or supervision over the child in the home or an incapacitated member in the household, or unless no gainful employment is available.

(c) Any child or parent required to engage in gainful employment but who cannot obtain such employment shall register with an employment service and make reasonable and continuous efforts to find gainful employment and provide such proof of his registration and efforts as the Social Services Commission may require. (1961, c. 998; 1963, c. 1061; 1965, c. 939, s. 2; 1969, c. 546, s. 1; 1971, c. 283; 1973, c. 476, s. 138.)

Editor's Note. — The 1973 amendment substituted "Social Services Commission" for "State Board of Social Services" in subsection (c).

Eligibility of Children for Aid to Families with Dependent Children Although Parent Does Not Qualify as a Payee. — See opinion of Attorney General to Colonel Clifton M. Craig, Commissioner, Department of Social Services, 40 N.C.A.G. 652 (1970).

§ 108-39.1. Work incentive program adopted; evidence of refusal to participate in special work projects; protective and vendor payments. — (a) The provisions of Part C of Title IV of the Federal Social Security Act pertaining to the work incentive program for recipients of aid to families with dependent children assistance, and the benefits thereunder, are hereby accepted and adopted.

(b) The work incentive program provided for by this section is a part of, and subject to all the same provisions of law as, the aid to families with dependent children program provided for in this Article; except that in the case of inconsistent provisions, the provisions of this section shall be deemed exceptions to other provisions of law in this Article.

(c) Written notice of a finding by the United States Secretary of Labor, or the United States Department of Labor, the Employment Security Commission, or other authorized agent of the Secretary of Labor as to whether a person has refused without good cause to accept employment or participate in a project shall be binding upon the State and its agencies and the political subdivisions of the State. Any other provision of law to the contrary notwithstanding, the original or copy of such a notice bearing the certification of a State or county agency that it is the original or true copy of the original in or from the records of the agency shall be admissible in evidence without the appearance of a witness, and it shall be prima facie evidence that it was duly received by the agency from the Secretary of Labor or his authorized agent.

(d) to (f) Repealed by Session Laws 1973, c. 744, s. 2.

(g) Protective and vendor payments required to be made under the work incentive program shall be made in accordance with the rules and regulations of the Social Services Commission, which rules and regulations shall be subject to the lawful requirements of the Secretary of Labor. (1969, c. 739, s. 2; 1973, c. 476, s. 138; c. 744, s. 2.)

Editor's Note. — The first 1973 amendment substituted "Social Services Commission" for "State Board of Social Services" in subsection (g).

The second 1973 amendment repealed former subsections (d), (e) and (f), relating to creation and operation of special work projects panels.

Section 1 of the second 1973 amendatory act provides: "G.S. 108-39.1 as the same appears in the 1971 Cumulative Supplement to Volume 3A of the General Statutes is hereby amended by striking out the words 'special work projects' as they appear in the title of that section and substituting therefor the word 'training,' by inserting the word 'or' immediately following the word 'participate' and immediately preceding the word 'to' in line 12 thereof, by striking out the words 'a project' immediately following the word 'in' and immediately preceding the word 'shall' in line 12 thereof and substituting therefor the word 'training'." The meaning of this section of the amendatory act is not clear, and no attempt has been made to give it effect in the amended section as set out above.

Part 3. The Administration of Aid to the Aged and Disabled and Aid to Families with Dependent Children.

§ 108-40. Application for assistance. — Any person who believes that he or another person is eligible to receive aid to the aged and disabled or aid to families with dependent children may submit an application for assistance to the county department of social services in the county in which the applicant resides. It shall be made in such form and shall contain such information as the Social Services Commission may require. (1937, c. 288, ss. 15, 45; 1939, c. 395, s. 1; 1941, c. 232; 1945, c. 615, s. 1; 1947, c. 91, s. 3; 1953, c. 675, s. 12; 1959, c. 179, ss. 1, 2; 1969, c. 546, s. 1; 1973, c. 476, s. 138; c. 742.)

Editor's Note. — The first 1973 amendment substituted "Social Services Commission" for "State Board of Social Services."

The second 1973 amendment added "in the county in which the applicant resides" at the end of the first sentence.

§ 108-41. Investigation of applicant. — Upon receipt of an application for public assistance, the county department shall make a prompt evaluation or investigation of the facts alleged in the application in order to determine the applicant's eligibility for assistance and to obtain such other information as the Department of Human Resources may require. (1937, c. 288, ss. 15, 45; 1939, c. 395, s. 1; 1941, c. 232; 1945, c. 615, s. 1; 1947, c. 91, s. 3; 1953, c. 675, s. 12; 1959, c. 179, ss. 1, 2; 1969, c. 546, s. 1; 1973, c. 476, s. 38.)

Editor's Note. — The 1973 amendment substituted "Department of Human Resources" for "State Department of Social Services."

§ 108-42. Granting or denial of assistance. — (a) The county director of social services shall submit his findings and recommendations on each application for aid to the aged and disabled and aid to families with dependent children to the county board of social services at its next meeting for its approval of assistance in each case, except that the disability factor of applications for aid to the disabled shall be finally determined by the Department of Human Resources as provided in G.S. 108-26.

(b) The county board of social services may delegate authority to the director to consider and process applications for assistance in all cases that require immediate action to prevent undue hardship; in such cases, the director shall report on his actions to the board at its next meeting, and the board shall approve, reject or modify such decisions.

(c) The board of county commissioners may review any grant approved by the county board of social services. The recipient of a disputed grant shall receive notice of the time and place of such review. If the board of commissioners deems that a grant was improperly allowed under the policies of the Social Services Commission, it may order that proper action be taken, with notice thereof given to the recipient and a copy to the county board of social services and the Secretary of Human Resources. Any modification made by the board of county commissioners shall be subject to review by the Secretary of Human Resources.

(d) All rules and regulations of the Social Services Commission which govern eligibility for public assistance from State appropriations or the amount of public assistance grants shall be subject to the approval of the Director of the Budget and the Advisory Budget Commission. (1937, c. 288, ss. 15, 16, 45, 46; 1939, c. 395, s. 1; 1941, c. 232; 1945, c. 615, s. 1; 1947, c. 91, s. 3; 1953, c. 675, s. 12; 1959, c. 179, ss. 1, 2; 1969, c. 546, s. 1; 1971, c. 523, s. 1; 1973, c. 476, s. 138.)

Editor's Note. — The 1973 amendment substituted "Department of Human Resources" for "State Department of Social Services," "Social Services Commission" for "State Board of Social Services" and "Secretary of Human Resources" for "Commissioner of Social Services."

Child's Support Payments Are Not Resource of Entire Family. — In calculating aid to families with dependent children benefits the inclusion of support payments belonging to one child as a resource available to the entire family works an unlawful appropriation of the funds of both supporting father and supported child. Gilliard v. Craig, 331 F. Supp. 587 (W.D.N.C. 1971).

In calculating aid to families with dependent children benefits the income of an individual with no legal duty of support may not be presumed to be available to the family, thus the contribution to the support of one child by one having no legal duty to support the rest of the family cannot be considered a resource available to that family. Gilliard v. Craig, 331 F. Supp. 587 (W.D.N.C. 1971).

§ 108-43. Reconsideration of grants. — All grants of public assistance shall be considered as frequently as required by the rules of the Social Services Commission. Whenever the condition of any recipient has changed to the extent that his award must be modified or terminated, the county director may make

the appropriate termination or change in payment and submit it to the county board of social services for approval at its next meeting. Prompt notice of all changes shall be given to the recipient, to the Department of Human Resources, and to the board of county commissioners. (1937, c. 288, ss. 19, 49; 1969, c. 546, s. 1; 1971, c. 523, s. 2; 1973, c. 476, s. 138.)

Editor's Note. — The 1973 amendment substituted "Social Services Commission" for "State Board" and "Department of Human Resources" for "State Department of Social Services."

Authority of State Board to Order a Uniform Raise in Welfare Payments without Processing Each File. — See opinion of Attorney General to Commissioner Clifton M. Craig, State Department of Social Services, 40 N.C.A.G. 703 (1970).

§ 108-44. Appeals. — (a) A public assistance applicant or recipient shall have a right to appeal the decision of the county board of social services or the board of county commissioners granting or denying assistance, or modifying the amount of assistance, or the failure of the county board of social services to act within a reasonable time under the rules and regulations of the Social Services Commission, to the Secretary of Human Resources. Each applicant or recipient shall be notified of this right to appeal when applying for assistance and upon any subsequent action of the county board on his case. An applicant or recipient may give notice of appeal by written notice to the county department of social services or through verbal notice to personnel employed by said county department.

(b) If there is such an appeal, the county director shall notify the Department of Human Resources according to the rules and regulations of the Social Services Commission and the Department of Human Resources shall designate a hearing officer who shall promptly hold an appeal hearing in the county after giving reasonable notice of the time and place of such hearing to the appellant and the county department of social services.

(c) At the appeal hearing before the hearing officer, the appellant and personnel of the county department of social services shall present such facts as may bear upon the case. After such hearing, the hearing officer shall forward a transcript of the hearing to the Department of Human Resources, to the county department of social services, and to the appellant or his attorney, which transcript or other documents considered at the appeal hearing shall serve as the basis for the Secretary's decision on such appeal.

(d) The Secretary of Human Resources shall make a decision on such appeal in conformity with federal and State law and the rules and regulations of the Social Services Commission. The Secretary shall notify the appellant and the county board of social services of his decision in writing by mail. The decision of the Secretary on such an appeal shall be binding upon the county board of social services and the board of county commissioners unless there is a petition for court review as provided in (e) herein.

(e) Any appellant or county board of social services who is dissatisfied with the decision of the Secretary may file a petition within 30 days after receipt of written notice of such decision for a hearing in the Superior Court of Wake County or of the county from which the case arose. Such court shall set the matter for a hearing within 30 days after receipt of such petition and after reasonable written notice to the Department of Human Resources, the county board of social services, the board of county commissioners, and the appellant. The court may take testimony and examine into the facts of the case to determine whether the appellant is entitled to public assistance under federal and State law, and under the rules and regulations of the Social Services Commission. The court may affirm, reverse or modify the order of the Secretary.

(f) If and when any federal law or regulation requires, as a condition of federal participation in public assistance payments, that public assistance applicants or recipients be furnished with the services of attorneys for the purpose of appeals described in this section or for the purpose of litigation arising out of such appeals, the services of attorneys shall be provided as required by the federal law or regulation, to the extent that funds are made available as hereinafter provided, in accordance with rules and regulations approved by the Governor, the Advisory Budget Commission, the Social Services Commission and the North Carolina State Bar Council. To the extent permitted by the rules and regulations thus approved, payment for the services of attorneys shall be made by the Department of Human Resources from funds transferred from contingency and emergency appropriations until such time as funds are appropriated for the services of attorneys.

(g) If and when federal laws or lawful regulations made pursuant to applicable federal laws are enacted requiring that, as a condition for federal participation in the costs of public assistance provided for in this Chapter, assistance payments must be continued pending the outcome of a hearing or litigation or informal contact with an assistance recipient, assistance shall be continued in accordance with such federal laws or regulations. (1937, c. 288, ss. 18, 48; 1939, c. 395, s. 1; 1957, c. 100, s. 1; 1969, c. 546, s. 1; cc. 735, 754; 1973, c. 476, s. 138.)

Editor's Note. — The 1973 amendment substituted "Social Services Commission" for "State Board of Social Services" in subsections (a), (b), (d) and (e) and near the end of the first sentence of subsection (f), substituted "Secretary of Human Resources" for "Commissioner of Social Services" in subsections (a) and (d), substituted "Secretary's" for "Commissioner's" near the end of subsection (c) and "Secretary" for "Commissioner" in subsections (d) and (e), and substituted "Department of Human Resources" for "State Department of Social Services" and for "State Department" in subsections (b), (c) and (e) and for "State Board of Social Services" in the second sentence of subsection (f).

Secretary May Delegate Decision-Making Authority regarding Appeals. — See opinion of Attorney General to Mr. David T. Flaherty, N.C. Department of Human Resources, 42 N.C.A.G. 313 (1973).

§ 108-45. Confidentiality of records. — (a) Except as provided in (b) below, it shall be unlawful for any person to obtain, disclose or use, or to authorize, permit, or acquiesce in the use of any list of names or other information concerning persons applying for or receiving public assistance that may be directly or indirectly derived from the records, files or communications of the Department of Human Resources or the county boards of social services, or acquired in the course of performing official duties except for purposes directly connected with the administration of the programs of public assistance in accordance with the rules and regulations of the Social Services Commission.

(b) The Department of Human Resources shall furnish a copy of the recipient check register monthly to each county auditor showing a complete list of all public assistance recipients, their addresses, and the amounts of the monthly grants. This register shall be a public record open to public inspection during the regular office hours of the county auditor, but said register or the information contained therein may not be used for any commercial or political purpose. Any violation of this section shall constitute a misdemeanor.

(c) Any listing of recipients of benefits under any financial assistance or social services program compiled by or used for official purposes by a county board of social services or a county department of social services shall not be used as a mailing list for political purposes. This prohibition shall apply to any list of recipients of benefits of any federal, State, county or mixed financial assistance or social services program. Further, this prohibition shall apply to the use of such listing by any person, organization, corporation, or business, including but not limited to public officers or employees of federal, State, county, or other local

governments, as a mailing list for political purposes. Any violation of this section shall be punishable as a general misdemeanor. (1937, c. 288, ss. 15, 45; 1939, c. 395, s. 1; 1941, c. 232; 1945, c. 615, s. 1; 1947, c. 91, s. 3; 1953, c. 675, s. 12; c. 882, ss. 1, 2, 4; 1959, c. 179, ss. 1, 2; 1961, c. 186; 1969, c. 546, s. 1; 1973, c. 476, s. 138; cc. 721, 1213.)

Editor's Note. — The first 1973 amendment substituted "Department of Human Resources" for "State Board" near the middle of subsection (a) and "Social Services Commission" for "State Board" at the end of subsection (a).

The second 1973 amendment rewrote subsection (b).

The third 1973 amendment added subsection (c).

Opinions of Attorney General. — Mr. John Blackwell, Jr., Special Attorney for the Cumberland County Department of Social Services, 40 N.C.A.G. 713 (1969).

§ 108-46. Removal to another county. — Any recipient who moves from one county to another county of this State shall continue to receive public assistance if eligible. The county director in the county from which he has moved shall transfer all necessary records relating to the recipient to the county director of the county to which the recipient has moved. The county from which the recipient moves shall pay the amount of assistance to which the recipient is entitled for a period of three months following his move, and thereafter the county to which the recipient has moved shall pay such assistance. (1937, c. 288, ss. 20, 50; 1943, c. 505, ss. 3, 7; 1961, c. 186; 1963, c. 136; 1969, c. 546, s. 1.)

§ 108-47. Assistance not assignable; checks payable to decedents. — The assistance granted by this Article shall not be transferable or assignable at law or in equity; and none of the money paid or payable as assistance shall be subject to execution, levy, attachment, garnishment, or other legal processes, or to the operation of any bankruptcy or insolvency law.

In the event of the death of an assistance recipient during or after the first day of the month for which a grant was previously authorized by the county social services board, any assistance check or checks payable to such recipient not endorsed prior to such recipient's death shall be delivered to the clerk of superior court and by him administered under the provisions of G.S. 28-68 through G.S. 28-68.3. (1937, c. 288, ss. 17, 47; 1945, c. 615, s. 1; 1953, c. 213; 1969, c. 546, s. 1; 1971, c. 446, ss. 1, 2.)

Editor's Note. — Sections 28-68 through 28-68.3, referred to in the second paragraph, are repealed by Session Laws 1973, c. 1329, s. 1, effective July 1, 1975.

§ 108-48. Fraudulent misrepresentation. — Any person who willfully and knowingly, with the intent to deceive, makes a false statement or representation or fails to disclose a material fact in order to enable himself or another person to obtain or to continue to receive assistance to which he is not entitled, is guilty of a misdemeanor, and upon conviction or plea of guilty shall be fined or imprisoned or both at the discretion of the court. (1937, c. 288, ss. 27, 57; 1963, cc. 1013, 1024, 1062; 1969, c. 546, s. 1.)

§ 108-49. Personal representative for mismanaged grants. — (a) Whenever a county director of social services shall determine that a recipient of assistance is unwilling or unable to manage assistance grants to the extent that deprivation or hazard to himself or others results, the director shall file a petition before a district court or the clerk of superior court in the county alleging such facts and requesting the appointment of a personal representative to be responsible for receiving such grants and to use them for the benefit of the recipient.

(b) Upon receipt of such petition, the court shall promptly hold a hearing, provided the recipient shall receive five days' notice in writing of the time and place of such hearing. If the court, sitting without a jury, shall find at the hearing that the facts alleged in the petition are true, it may appoint some responsible person as personal representative. The personal representative shall serve without compensation and be responsible to the court for the faithful performance of his duties. He shall serve until the director of social services or the recipient shows to the court that the personal representative is no longer required or is unsuitable. All costs of court relating to proceedings under this section shall be waived.

(c) Any recipient for whom a personal representative is appointed may appeal such appointment to superior court for a hearing de novo without a jury.

(d) All findings of fact made under the proceedings authorized by this section shall not be competent as evidence in any case or proceeding which concerns any subject matter other than that of appointing a personal representative. (1959, c. 1239, ss. 1, 3; 1961, c. 186; 1969, c. 546, s. 1.)

§ 108-50. Protective and vendor payments. — Instead of the use of personal representatives provided for by G.S. 108-49, when necessary to comply with any present or future federal law or regulation in order to obtain federal participation in public assistance payments, the payments may be made direct to vendors to reimburse them for goods and services provided the applicants or recipients, and may be made to protective payees who shall act for the applicant or recipient for receiving and managing assistance. Payments to vendors and protective payees shall be made to the extent provided in, and in accordance with, rules and regulations of the Social Services Commission, which rules and regulations shall be subject to applicable federal laws and regulations. (1963, c. 380; 1969, c. 546, s. 1; c. 747; 1973, c. 476, s. 138.)

Editor's Note. — The 1973 amendment substituted "Social Services Commission" for "State Board of Social Services."

Part 4. Financing Aid to the Aged and Disabled and Aid to Families with Dependent Children.

§ 108-51. Acceptance of grants-in-aid. — The Department of Human Resources is hereby authorized to accept all grants-in-aid for the programs of public assistance established under this Article which may be available to the State by the federal government under the Social Security Act. The provisions of this Article shall be liberally construed in order that the State and its citizens may benefit fully from such grants-in-aid. (1937, c. 288, ss. 5, 33; 1969, c. 546, s. 1; 1973, c. 476, s. 138.)

Editor's Note. — The 1973 amendment substituted "Department of Human Resources" for "State Department of Social Services."

§ 108-52. Transfer of funds to counties. — (a) A state fund for each program of public assistance established under this Article is hereby created from federal appropriations or State appropriations, or the combination of both, as applicable, to such program. Each State fund shall be drawn out on the warrant of the State Treasurer and issued upon order of the Secretary of Human Resources. Quarterly, or more often if appropriate, the Secretary shall transfer to each county that part of the county's allotment from each State fund that the county is required to disburse for its public assistance programs during the appropriate

period. Before transferring such funds, the Secretary may require that the county certify, through its auditor or fiscal agent, that sufficient county funds are available to pay the county's share of the public assistance expenditures corresponding to the amount of State money to be transferred.

(b) The Secretary may transfer to any county an amount sufficient to pay in full the grants approved in that county for the first quarter in any fiscal year. One fourth of this amount shall be advanced in anticipation of the collection of taxes and shall be deducted from future allotments within the same fiscal year to that county.

(c) When the Secretary finds that the disbursement of funds by a county to qualified recipients is being unduly delayed, or that payments to recipients are jeopardized, he may require that grants be promptly paid as a condition for the allotment or transmission of State moneys to the county. State moneys may be withheld until the Secretary is satisfied that the county is paying the grants promptly.

(d) When the Department of Human Resources finds it to be in the public interest to require more adequate protection of funds collected in the county for disbursement to recipients, or the more prompt, efficient and certain payment of grants to recipients, the Secretary may demand and require that the funds raised by taxation in any county be transmitted to the State Treasurer. The Secretary shall, in such cases, give notice to the board of county commissioners and to the county officials having such funds in their custody. The board of county commissioners and responsible officials shall immediately transfer all such funds to the State Treasurer for disbursement under rules and regulations established by the Department of Human Resources. (1937, c. 288, ss. 24, 54; c. 405; 1943, c. 505, s. 10; 1969, c. 546, s. 1; 1973, c. 476, s. 138; c. 717, s. 3.)

Editor's Note. — The first 1973 amendment substituted "Secretary of Human Resources" for "Commissioner of Social Services" in the second sentence of subsection (a) and "Secretary" for "Commissioner" throughout the remainder of the section, substituted "appropriate" for "the State Board directs" in the third sentence of subsection (a) and substituted "Department of Human Resources" for "State Board of Social Services" in two places in subsection (d).

The second 1973 amendment substituted, in the first sentence of subsection (a), "federal appropriations or State appropriations, or the combination of both, as applicable" for "federal and State appropriations."

§ 108-53. Allocation of nonfederal shares. — (a) The nonfederal share of the annual cost of each public assistance program may be divided between the State and the counties in a manner consistent with the provisions of the federal Social Security Act, except that the share required from the counties may not exceed the share required from the State.

(b) The nonfederal share of the annual cost of public assistance provided to Indians living on federal reservations held in trust by the United States on their behalf shall be borne entirely by the State. The Secretary of Human Resources shall reserve from State appropriations for public assistance an amount sufficient to pay the county's share of the cost of public assistance to eligible Indian residents of federal reservations, plus related administrative costs incidental to providing such assistance, and shall pay same to counties containing such a federal reservation. (1965, c. 708; 1969, c. 546, s. 1; 1973, c. 476, s. 138.)

Editor's Note. — The 1973 amendment substituted "Secretary of Human Resources" for "Commissioner" in subsection (b).

State Must Pay All Nonfederal Share of Medicaid Benefits for Indians Living on Federal Reservation. — See opinion of Attorney General to Mr. Clifton M. Craig, Commissioner, Department of Social Services, 41 N.C.A.G. 140 (1970).

§ 108-54. Determination of county expenditures. — Before March 15 of each year, the director of social services of every county shall compile and submit to the county board of social services an estimate of total funds required to finance each program of public assistance within the county in the next fiscal year on forms furnished by the Department of Human Resources. The county board shall review, modify, and approve such estimate and transmit it before April 1 to the board of county commissioners, which shall review, modify and approve it before April 15 for transmittal to the Secretary of Human Resources. The Secretary of Human Resources, as agent of the Department of Human Resources, shall review the estimate submitted by each county and notify the board of county commissioners by June 1 of the adequacy of the county's estimate and of the amount of county funds necessary to support an adequate public assistance budget in the next fiscal year. Upon receipt of such notice, the board of county commissioners shall levy taxes sufficient to provide for the payment of the county's part of such budget. If the board of commissioners disputes the budget recommended by the Secretary of Human Resources, the Social Services Commission shall make a final determination that shall be binding upon the county. (1937, c. 288, ss. 9, 21, 39, 51; 1943, c. 505, s. 8; 1969, c. 546, s. 1; 1973, c. 476, s. 138.)

Editor's Note. — The 1973 amendment substituted "Department of Human Resources" for "State Department of Social Services" in the first sentence and for "State Board" in the third sentence, substituted "Secretary of Human Resources" for "Commissioner of Social Services" in one place and for "Commissioner" in two places and substituted "Social Services Commission" for "State Board of Social Services" in the last sentence.

This section was also amended by Session Laws 1973, c. 1418, s. 1, effective July 1, 1974, through June 30, 1975. That act, being temporary, has not been given effect in the section as set out above.

Session Laws 1973, c. 1418, s. 2, effective July 1, 1974, through June 30, 1975, enacted a new section 108-54.1, setting up a "State Public Assistance Contingency Fund." That section, being temporary, is not set out herein.

§ 108-55. Determination of administrative expenses. — The director of social services of each county shall annually compile and submit to the county board of social services an estimate of total funds required to finance the administrative expenses of the social service programs in the next fiscal year. This estimate shall be prepared before March 15 on forms furnished by the Department of Human Resources. The county board of social services shall review, modify and approve the estimate and transmit it to the board of county commissioners before April 1 for its review, modification and approval. The estimate shall then be forwarded to the Secretary of Human Resources on or before April 15. The Secretary of Human Resources, as agent of the Department of Human Resources, shall review the estimate submitted by the county and notify the board of commissioners by June 1 of the adequacy of its estimate and of the amount of county funds necessary to support the social service administrative budget in the subsequent fiscal year. Upon receipt of such notice, the board of commissioners shall levy taxes sufficient to provide for the payment of the county's part of the budget. If the board of commissioners disputes the budget recommended by the Secretary of Human Resources, the Social Services Commission shall make a final determination that shall be binding upon the county. (1937, c. 288, ss. 23, 53; 1939, c. 395, s. 1; 1941, c. 232; 1943, c. 505, s. 9; 1945, c. 615, s. 1; 1957, c. 100, s. 1; 1961, c. 186; 1963, c. 248, s. 1; 1967, c. 898; 1969, c. 546, s. 1; 1973, c. 476, s. 138.)

Editor's Note. — The 1973 amendment substituted "Department of Human Resources" for "State Department of Social Services" in the second sentence and for "State Board" in the fifth sentence, substituted "Secretary of Human Resources" for "Commissioner of Social Services" in one place and for "Commissioner" in two places and substituted "Social Services Commission" for "State Board of Social Services" in the last sentence.

This section was repealed by Session Laws 1973, c. 1418, s. 3, effective July 1, 1974, through June 30, 1975.

§ 108-56. Counties to levy taxes. — (a) Whenever the Secretary of Human Resources assigns a portion of the nonfederal share of public assistance expenses to the counties under the rules and regulations of the Social Services Commission, the board of commissioners of each county shall levy and collect the taxes required to meet the county's share of such expenses.

(b) Appropriations and revenue estimates for each of the public assistance programs required by this Chapter and for administrative expenses shall be separately shown in the county budget ordinance and the accounting system. In the discretion of the board of county commissioners, the budget ordinance and accounting system may set up these programs (i) as separate lines within the general fund, (ii) within separate funds for each program, or (iii) within a single public assistance fund. Taxes levied for public assistance programs and administration shall be sufficient, when combined with other funds available for use for public assistance expenses from any other source of revenue (including borrowing in anticipation of collection of taxes), to meet the financial requirements of public assistance. (1937, c. 288, ss. 9, 39; 1969, c. 546, s. 1; 1971, c. 780, s. 35; 1973, c. 476, s. 138.)

Cross Reference. — See the note catchlined "Revision of Chapter" following the analysis to Chapter 159.

Editor's Note. — The 1973 amendment substituted "Secretary of Human Resources" for "Commissioner" and "Social Services Commission" for "State Board" in subsection (a).

This section was also amended by Session Laws 1973, c. 1418, s. 4, effective July 1, 1974, through June 30, 1975. That act, being temporary, has not been given effect in the section as set out above.

§ 108-57. Appropriations not to revert. — County appropriations for public assistance expenses or administration shall not lapse or revert, and the unexpended balances may be considered in making further public assistance or administrative appropriations. At any time during the fiscal year, any county may transfer county funds from one public assistance program to another if such action appears to be both necessary and feasible, provided the county secures the approval of the Secretary of Human Resources. (1953, c. 891; 1967, c. 554; 1969, c. 546, s. 1; 1973, c. 476, s. 138.)

Editor's Note. — The 1973 amendment substituted "Secretary of Human Resources" for "Commissioner of Social Services."

This section was also amended by Session Laws 1973, c. 1418, s. 5, effective July 1, 1974, through June 30, 1975. That act, being temporary, has not been given effect in the section as set out above.

§ 108-58. Equalizing fund. — The Secretary of Human Resources is authorized and directed to reserve from State appropriations for the programs of public assistance an amount that he finds to be necessary to equalize the burden of taxation in the counties of the State, and to equalize the benefits received by the recipients of public assistance. This amount shall be expended and disbursed solely for the use and benefit of persons eligible for assistance. The amount reserved, to be known as the equalizing fund, shall be distributed

among the counties according to their needs under a formula approved by the Social Services Commission so as to produce a fair and just distribution. (1937, c. 288, s. 62; 1943, c. 505, s. 11; 1963, c. 551, ss. 1, 2; c. 599, s. 2; 1965, c. 409; 1969, c. 546, s. 1; 1973, c. 476, s. 138.)

Editor's Note. — The 1973 amendment substituted "Secretary of Human Resources" for "Commissioner of Social Services" and "Social Services Commission" for "State Board of Social Services."

Part 5. Medical Assistance.

§ 108-59. State fund created. — To provide for an effective medical assistance program and its administration in North Carolina, the Social Services Commission is authorized and empowered to establish from federal, State and county appropriations a fund to be known as the State Fund for Medical Assistance, and to adopt rules and regulations under which payments are to be made out of such fund in accordance with the provisions of this Part. The nonfederal share may be divided between the State and the counties, in a manner consistent with the provisions of the federal Social Security Act, except that the share required from the counties may not exceed the share required from the State. If a portion of the nonfederal share is required from the counties, the boards of county commissioners of the several counties shall levy, impose and collect the taxes required for the special purpose of medical assistance as provided in this Part, in an amount sufficient to cover each county's share of such assistance. (1965, c. 1173, s. 1; 1969, c. 546, s. 1; 1973, c. 476, s. 138.)

Editor's Note. — The 1973 amendment substituted "Social Services Commission" for "State Board of Social Services."

§ 108-60. Payments from fund. — From the fund established in G.S. 108-59, the Social Services Commission may authorize, within appropriations made for this purpose, payments of all or part of the cost of medical and other remedial care for any eligible person, when it is essential to the health and welfare of such person that such care be provided, and when the total resources of such person are not sufficient to provide the necessary care. Payments from the fund shall be made only to intermediate-care facilities, hospitals and nursing homes licensed and approved under the laws of the State of North Carolina or under the laws of another state, or to pharmacies, physicians, dentists, optometrists or other providers of services authorized by the Social Services Commission. (1965, c. 1173, s. 1; 1969, c. 546, s. 1; 1971, c. 435; 1973, c. 476, s. 138; c. 644.)

Editor's Note. — The first 1973 amendment substituted "Social Services Commission" for "State Board of Social Services."

The second 1973 amendment inserted "intermediate-care facilities" and substituted "other providers of services" for "other personnel" in the second sentence.

§ 108-61. Acceptance of federal grants. — All of the provisions of the federal Social Security Act providing grants to the states for medical assistance are accepted and adopted, and the provisions of this Part shall be liberally construed in relation to such act so that the intent to comply with it shall be made effectual. Nothing in this Part or the regulations made under its authority shall be construed to deprive a recipient of assistance of the right to choose the licensed provider of the care or service made available under this Part within the

provisions of the federal Social Security Act. (1965, c. 1173, s. 1; 1969, c. 546, s. 1.)

§ 108-61.1: Repealed by Session Laws 1973, c. 476, s. 138.

§ 108-61.2. Subrogation rights; withholding of information a misdemeanor. — (a) To the extent of payments under this Part, the county involved shall be subrogated to all rights of recovery, contractual or otherwise, of the beneficiary of assistance under this Part against any person. It shall be the responsibility of the county commissioners, with such cooperation as they shall require from the county board of social services and the county director of social services, to enforce this section through the services of the county attorney in accordance with attorneys'-fee arrangements approved by the Department of Human Resources. The United States and the State of North Carolina shall be entitled to share in each net recovery under this section. Their shares shall be promptly paid under this section and their proportionate parts of such sum shall be determined in accordance with the matching formulas in use during the period for which assistance was paid to the recipient.

(b) It shall be a misdemeanor for any person seeking or having obtained assistance under this Part for himself or another to willfully fail to disclose to the county department of social services or its attorney the identity of any person or organization against whom the recipient of assistance has a right of recovery, contractual or otherwise. (1973, c. 476, s. 138; c. 1031, s. 1.)

Editor's Note. — Pursuant to Session Laws 1973, c. 476, s. 138, "Department of Human Resources" has been substituted for "State Board of Social Services" in the section as enacted by Session Laws 1973, c. 1031, s. 1.

Part 6. General Assistance.

§ 108-62. Purpose and eligibility. — Assistance may be granted under this Part to persons who would have been eligible under the aid to the aged and disabled category prior to January 1, 1974, but who after such date do not qualify under the Federal Supplemental Security Income Program, including needy spouses, essential persons, certain disabled persons, and those persons needing supplemental payments in boarding homes, rest homes, and convalescent homes for the aged or infirm and those needing attendant care at home. Nothing in this Part should be interpreted so as to preclude any individual county from operating any program of financial assistance using only county funds. (1949, c. 1038, s. 2; 1961, c. 186; 1969, c. 546, s. 1; 1973, c. 717, s. 1.)

Editor's Note. — The 1973 amendment rewrote this section.

County Participation in the General Assistance Program Is Optional. — See opinion of Attorney General to Dr. Renee Westcott, Division of Social Services, N.C. Department of Human Resources, 43 N.C.A.G. 182 (1973).

Assistance may be granted under this Part to an individual who becomes eligible for federal supplementary security income program on or after Jan. 1, 1974, and at that time possesses qualifications which would have rendered him eligible under the aid to the aged and disabled category in effect before Jan. 1, 1974. Opinion of Attorney General to Dr. Renee Westcott, Director, Division of Social Services, 43 N.C.A.G. 91 (1973).

§ 108-63. Application procedure. — (a) Applications under this Part shall be made to the county director of social services who, with the approval of the county board of social services and in conformity with the rules and regulations of the Social Services Commission, shall determine whether assistance shall be granted and the amount of such assistance.

(b) The amount of assistance which any eligible person may receive shall be determined with regard to the resources and necessary expenditures of the applicant, in accordance with the appropriate rules and regulations of the Social Services Commission.

(c) Repealed by Session Laws 1973, c. 717, s. 4. (1949, c. 1038, s. 2; 1961, c. 186; 1969, c. 546, s. 1; 1973, c. 476, s. 138; c. 717, s. 4.)

Editor's Note. — The first 1973 amendment substituted "Social Services Commission" for "State Board of Social Services" in subsection (a) and for "State Board" in subsection (b) and in former subsection (c).

The second 1973 amendment repealed subsection (c), relating to the amount of assistance.

§ 108-64. State funds to counties. — (a) A fund, to be known as the "State General Assistance Fund," shall be created from appropriations made by the General Assembly and from grants of the federal government (when such grants are made available to the State). This Fund shall be used exclusively for assistance to needy persons eligible under this Part.

(b) Allotments shall be made annually by the Commissioner of Social Services, as prescribed by G.S. 108-52, to the counties participating in the program established by this Part.

(c) No allotment shall be used, either directly or indirectly, to replace county appropriations or expenditures. (1949, c. 1038, s. 2; 1955, c. 310, s. 3; 1961, c. 186; 1969, c. 546, s. 1; 1973, c. 717, s. 5.)

Editor's Note. — The 1973 amendment deleted the former first sentence of subsection (c), which required the allotments provided by this section to be used by counties solely as supplementary funds.

§ 108-65. Participation permissive. — The general assistance program established by this Part shall be administered as required by the rules and regulations of the Social Services Commission, except that no county shall be granted any allotment from the State General Assistance Fund nor be subject to the provisions of this Part unless its consent be given in the manner prescribed by the rules and regulations of the Social Services Commission. (1949, c. 1038, s. 2; 1969, c. 546, s. 1; 1973, c. 476, s. 138; c. 717, s. 6.)

Editor's Note. — The first 1973 amendment substituted "Social Services Commission" for "State Board of Social Services" and for "State Board."

The second 1973 amendment deleted the former second sentence, which made participation mandatory in the event that federal assistance grants should be conditioned upon participation by all counties.

County Participation in the General Assistance Program Is Optional. — See opinion of Attorney General to Dr. Renee Westcott, Division of Social Services, N.C. Department of Human Resources, 43 N.C.A.G. 182 (1973).

Counties Must Consent to Entire General Assistance Program Unless Social Services Commission Provides Otherwise. — See opinion of Attorney General to Dr. Renee Westcott, N.C. Department of Social Services, 42 N.C.A.G. 309 (1973).

Part 7. Foster Home Fund.

§ 108-66. State Foster Home Fund. — (a) The General Assembly shall appropriate funds to the Department of Human Resources for the purpose of providing assistance to needy children who are placed in foster homes by county departments of social services in accordance with the rules and regulations of the Social Services Commission. Such appropriations shall be known and

designated as the State Foster Home Fund and, together with county contributions for this purpose, shall be expended to provide for the costs of keeping needy children in foster homes.

(b) No needy child shall be eligible for the benefits provided by this section if he be eligible for foster home care benefits provided by Part 2 of this Article entitled "Aid to Families with Dependent Children."

(c) No benefits provided by this section shall be granted to any needy individual who has passed his eighteenth birthday unless he is less than 21 years of age and is regularly attending and successfully pursuing a course of study leading to a high school diploma or its equivalent; a course of study at the college level; or a course of vocational or technical training designed to fit him for gainful employment. (1937, c. 135, ss. 1-3; 1955, c. 1044, ss. 1, 2; 1957, c. 100, s. 1; 1969, c. 546, s. 1; 1973, c. 476, s. 138; c. 645, s. 2.)

Editor's Note. — The first 1973 amendment substituted "Department of Human Resources" for "State Department of Social Services" and "Social Services Commission" for "State Board" in subsection (a).

The second 1973 amendment added subsection (c).

Assistance from State Foster Home Fund May Not Be Lawfully Granted to Persons Who Are 18 or More Years of Age and Who Live in Foster Homes. — See opinion of Attorney General to Mr. Clifton Craig, Department of Social Services, 42 N.C.A.G. 8 (1972).

"Foster Home" Includes Various Institutions Which Are Eligible for Assistance. — See opinion of Attorney General to Mr. Clifton M. Craig, Social Service, 41 N.C.A.G. 384 (1971).

ARTICLE 3.

Inspection and Licensing Authority.

Part 1. Licensing of Public Solicitation.

§ 108-67. Definitions. — As used in this Part, certain words and phrases shall be defined as follows:

(1) "Charitable organization" is any person, organization, corporation, institution, association, agency or copartnership which is or purports to be a charitable, benevolent, health, educational, religious, patriotic or other similar public cause or an organization to alleviate cruelty toward animals.

(2) "Solicitation" is any act of seeking or obtaining, whether by mail, through solicitors, or other means, any of the following benefits: a grant of money or property, including a promise to give any such grant; a gift of goods, wares, merchandise or other items of value; the sale or distribution, or offer for sale or distribution to the public of any item to raise money; the sale of memberships, periodicals, books or advertising space; and the promotion of any public bazaar, sale, entertainment, exhibition or other event to secure money, goods, or property.

(3) "Solicitor" is any person, organization, corporation, institution, association, agency or copartnership that agrees, for whatever reason, to solicit or collect contributions or other benefits for any charitable organization.

(4) "Verified financial report" is a report of an audit conducted in accordance with generally accepted auditing standards and containing the expression of an unqualified opinion by an independent certified public accountant. (1969, c. 546, s. 1.)

§ 108-68. Licenses required. — No charitable organization, nor any other organization nor person on its behalf, intrastate or foreign, unless exempted by G.S. 108-73, shall solicit benefits from residents of North Carolina unless it has

filed a request with the Secretary of Human Resources for a license and is so licensed as provided by this Part. (1939, c. 144, s. 1; 1947, c. 572; 1969, c. 546, s. 1; 1973, c. 476, s. 138.)

Editor's Note. — The 1973 amendment substituted "Secretary of Human Resources" for "Commissioner of Social Services."

§ 108-69. Licensing procedure. — (a) Every charitable organization required under this Part to secure a license in order to solicit benefits or to authorize solicitations in its behalf shall file a written application with the Secretary of Human Resources on a form furnished by him. The application shall require proof of the following subjects: the worthiness of the charitable organization's cause or causes; its chartered responsibility; the existence of an adequate, responsible and functioning governing board; its need for public solicitation, and the proposed uses of solicited funds. The applicant shall also file a report summarizing its accomplishments during the preceding fiscal period; a verified financial report for the preceding fiscal period; and a report of the proposed program and objectives, including a budget, for the fiscal period for which the application is filed.

(b) Newly created charitable organizations with no financial history may be granted a nonrenewable license for one year if, in the judgment of the Secretary of Human Resources, all requirements for licensing except that of the verified financial report are satisfied.

(c) The Social Services Commission may adopt standards for the regulation and licensing of certain charitable organizations whose solicitation goals and total contributions received are below specified limits to provide for simplified financial reporting as a prerequisite for licensing.

(d) In considering applications for licensing, the Secretary of Human Resources shall seek the counsel of any State agency in any cause in which an agency may have an interest or responsibility.

(e) A license shall not be issued to any applicant that pays or agrees to pay an unreasonable or exorbitant amount of the funds collected, as determined by regulations of the Social Services Commission, for the compensation of solicitors and for expenses incurred in promoting and conducting its fund-raising activities and solicitation campaign.

(f) The Secretary of Human Resources shall issue a license to solicit for a period not to exceed one year, subject to annual renewal, if he finds after full investigation and consideration of the completed application that the causes of the applicant are not harmful to the public interest and that the proposed solicitations are truly for the causes set forth in the application.

(g) The Secretary of Human Resources may revoke any license before its expiration date if such action would be in the public interest. (1939, c. 144, s. 1; 1947, c. 572; 1969, c. 546, s. 1; 1973, c. 476, s. 138.)

Editor's Note. — The 1973 amendment substituted "Social Services Commission" for "State Board of Social Services" and "Secretary of Human Resources" for "Commissioner."

§ 108-70. Appeal procedure. — An applicant who is refused a license or whose license has been revoked by the Secretary of Human Resources shall be entitled to a hearing before the Social Services Commission if a written request for such hearing be made to the Social Services Commission within 15 days after notice of refusal or revocation is delivered or mailed to the applicant or licensee. All hearings shall be open to the public. The final decision of the Social Services Commission on the matter appealed from shall be mailed to the interested parties

within 10 days after such hearing. (1939, c. 144, s. 1; 1947, c. 572; 1969, c. 546, s. 1; 1973, c. 476, s. 138.)

Editor's Note. — The 1973 amendment substituted "Secretary of Human Resources" for "Commissioner" in one place and "Social Services Commission" for "Commissioner" in three places.

§ 108-71. Annual financial reports. — (a) Every licensee under this Part shall file a verified financial report with the Department of Human Resources within 120 days after the end of each fiscal year. Such verified financial report shall show the licensee's receipts and expenditures on an itemized basis so as to disclose the various purposes for which the licensee solicited and expended funds. Such report shall contain, but not be limited to, details on the costs of raising or securing contributions; the costs of administration, including the organization and operation of new member groups and affiliates within the State; the costs of research pursued by the licensee; and the portion of funds raised in the State and expended inside and outside the State.

(b) No license shall be renewed for any licensee that fails to comply with the provisions of this section. (1967, c. 607; 1969, c. 546, s. 1; 1973, c. 476, s. 138.)

Editor's Note. — The 1973 amendment substituted "Department of Human Resources" for "State Department of Social Services."

§ 108-72. Authorization of individual solicitors. — Every person who shall solicit or collect any contribution in money or other property or who shall sell any item for which the proceeds are reserved for and given to a licensee under this Part shall have in his possession a written authorization, pledge card, receipt form, or other evidence of authority provided to him by the licensee, and he shall show such authorization upon request. (1939, c. 144, s. 2; 1947, c. 572; 1969, c. 546, s. 1.)

§ 108-73. Exemptions from licensing requirement. — (a) The provisions of this Part shall not apply to any solicitation or appeal made by the following organizations:

(1) Any civic, religious, educational, fraternal, or patriotic organization which confines its solicitation or appeal to its own membership and which does not grant membership to persons who make a contribution as a result of a solicitation or appeal;

(2) Any church that seeks funds for the construction, upkeep, or maintenance of the church building, clergy's residence or for the support of its clergy;

(3) Any college holding membership in the North Carolina College Conference and whose governing board makes the solicitation and receives the contributions;

(4) Any nonpublic high school which is accredited by the State Department of Public Instruction and which offers at least the minimum course of study prescribed by the State Board of Education;

(5) Any locally indigenous charitable organization which confines its solicitations and operations to the county in which its executive office is located and its governing board resides.

(b) Any charitable organization or other organization that desires to solicit or does solicit the public and claims exemption from the licensing requirements of this Part shall file a statement with the Secretary of Human Resources on forms prescribed by him which shall show proof of its exempted status under this section. The exemption shall be authorized by the Secretary of Human

Resources before such organization may begin or continue to solicit from the public. The claimed exemption shall be subject to annual renewal on forms prescribed by the Secretary of Human Resources. (1939, c. 144, s. 2a; 1947, c. 572; 1963, c. 110; 1965, c. 990; 1969, c. 546, s. 1; 1973, c. 476, s. 138.)

Editor's Note. — The 1973 amendment substituted "Secretary of Human Resources" for "Commissioner" in subsection (b).

§ 108-74. Solicitation for individual livelihood. — (a) It shall be unlawful for any person to engage in the business of soliciting contributions for his own or another person's livelihood, either upon the streets and highways of this State, through door-to-door solicitation, or through the mails unless he obtains a license for this purpose from the Secretary of Human Resources.

(b) Any person who desires to engage in the business of soliciting contributions under this section shall file a written application for a license on a form furnished by the Secretary of Human Resources which shall contain his name, his addresses for the past five years, his purpose in seeking to solicit contributions, his reasons for not pursuing another means of livelihood or for not seeking public assistance grants, and such other information as the Secretary of Human Resources may require. Before issuing a license, the Secretary of Human Resources shall seek counsel from other interested State agencies. Persons soliciting contributions while carrying merchandise for sale shall not be exempted from the provisions of this section.

(c) A licensee under this section shall carry a copy of his license with him while soliciting contributions and shall show it on request. (1947, c. 572; 1969, c. 546, s. 1; 1973, c. 476, s. 138.)

Editor's Note. — The 1973 amendment substituted "Secretary of Human Resources" for "Commissioner of Social Services" and for "Commissioner."

§ 108-75. Penalties for violations. — (a) Any solicitor or charitable organization that violates any of the provisions of this Part shall be guilty of a misdemeanor. Upon conviction, the court shall commit an individual violator to prison for a term not to exceed six months; corporate violators shall be fined not more than five hundred dollars ($500.00).

(b) Any licensee under this Part that, after conducting a solicitation campaign and obtaining funds from such solicitation, shall wilfully convert or misapply any of such funds in a manner contrary to the purposes set forth in its application for licensing shall be guilty of a felony and be punished in the discretion of the court. (1939, c. 144, s. 3; 1947, c. 572; 1969, c. 546, s. 1.)

Part 2. Licensing of Private Institutions.

§ 108-76. Licensing of maternity homes. — (a) The Department of Human Resources shall inspect and license all maternity homes established in the State under such rules and regulations as the Social Services Commission may adopt.

(b) Facilities subject to the provisions of this section shall include:

(1) Institutions or homes maintained for the purpose of receiving pregnant women for care before, during, and after delivery, and

(2) Institutions or lying-in homes maintained for the purpose of receiving pregnant women for care before and after delivery, when delivery takes place in a licensed hospital. (1868-9, c. 170, s. 3; Code, ss. 2332, 2333; Rev., ss. 3914, 3915; 1917, c. 170, s. 1; 1919, c. 46, ss. 1, 2; C. S., s. 5006; 1925, c. 90, ss. 1, 2; 1927, c. 65; 1931, c. 175; 1937, c. 319, s. 2; c. 436, ss. 3, 5; 1941, c. 270, s. 1; 1945, c. 185; 1951, c. 103; c. 1098, s. 2; 1953,

c. 117; 1955, c. 269; 1957, c. 100, s. 1; c. 541, s. 7; 1959, c. 684; 1961, c. 51, s. 2; 1965, cc. 391, 1175; 1969, c. 546, s. 1; 1973, c. 476, s. 138.)

Editor's Note.— The 1973 amendment substituted "Department of Human Resources" for "State Department of Social Services" and "Social Services Commission" for "State Board of Social Services."

§ 108-77. Licensing of homes for the aged and infirm. — (a) The Department of Human Resources shall inspect and license, under the rules and regulations adopted by the Social Services Commission, all boarding homes, rest homes, and convalescent homes for persons who are aged or are mentally or physically infirm, except those exempted in subsection (c) below. Licenses issued under the authority of this section shall be valid for one year from the date of issuance unless revoked for cause earlier by the Secretary of Human Resources.

(b) Any individual or corporation that shall operate a facility subject to license under this section without such license shall be guilty of a misdemeanor.

(c) Facilities which are exempt from the provisions of this section are as follows:

(1) Those which care for one person only;

(2) Those which care for two or more persons, all of whom are related or connected by blood or marriage to the operator of the facility;

(3) Those which make no charges for care, either directly or indirectly;

(4) Those which care for no more than four persons, all of whom are under the supervision of the United States Veterans Administration.

(d) This section shall not apply to any institution which is established, maintained or operated by any unit of government; any commercial inn or hotel; or any facility licensed by the Commission for Health Services under the provisions of G.S. 130-9(e), entitled "Nursing Homes." (1868-9, c. 170, s. 3; Code, ss. 2332, 2333; Rev., ss. 3914, 3915; 1917, c. 170, s. 1; 1919, c. 46, ss. 1, 2; C. S., s. 5006; 1925, c. 90, ss. 1, 2; 1927, c. 65; 1931, c. 175; 1937, c. 319, s. 2; c. 436, ss. 3, 5; 1941, c. 270, s. 1; 1945, c. 185; 1951, c. 103; c. 1098, s. 2; 1953, c. 117; 1955, c. 269; 1957, c. 100, s. 1; c. 541, s. 7; 1959, c. 684; 1961, c. 51, s. 2; 1965, cc. 391, 1175; 1969, c. 546, s. 1; 1973, c. 476, ss. 128, 138.)

Editor's Note. — The 1973 amendment substituted "Department of Human Resources" for "State Department of Social Services," "Social Services Commission" for "State Board of Social Services" and "Secretary of Human Resources" for "Commissioner" in subsection (a) and substituted "Commission for Health Services" for "State Board of Health" in subsection (d).

§ 108-78. Licensing of private child-caring institutions. — (a) The Department of Human Resources shall inspect and license private child-caring institutions in the State under rules and regulations adopted by the Social Services Commission, except those child-caring institutions which are exempt under (c) herein.

(b) Licenses granted to private child-caring institutions under this section shall be valid for one year after the date of issuance and may be revoked sooner if the Secretary of Human Resources finds that the public good or the welfare of the children within any institution is not being properly served.

(c) This section shall not apply to any child-caring institution chartered by the laws of the State of North Carolina (or operating under charters of other states which have complied with the corporation laws of North Carolina) which has a plant and assets worth sixty thousand dollars ($60,000) or more and which is owned or operated by a religious denomination or fraternal order. (1868-9, c. 170, s. 3; Code, ss. 2332, 2333; Rev., ss. 3914, 3915; 1917, c. 170, s. 1; 1919, c. 46, ss. 1, 2; C. S., s. 5006; 1925, c. 90, ss. 1, 2; 1927, c. 65; 1931, c. 175; 1937, c. 319, s.

2; c. 436, ss. 3, 5; 1941, c. 270, s. 1; 1945, c. 185; 1951, c. 103; c. 1098, s. 2; 1953, c. 117; 1955, c. 269; 1957, c. 100, s. 1; c. 541, s. 7; 1959, c. 684; 1961, c. 51, s. 2; 1965, cc. 391, 1175; 1969, c. 546, s. 1; 1973, c. 476, s. 138.)

Editor's Note. — The 1973 amendment substituted "Department of Human Resources" for "State Department of Social Services" and "Social Services Commission" for "State Board of Social Services" in subsection (a) and substituted "Secretary of Human Resources" for "Commissioner" in subsection (b).

Part 3. Local Confinement Facilities.

§ 108-79. Inspection. — The Department of Human Resources shall, as authorized by G.S. 153-51, inspect regularly all local confinement facilities as defined by G.S. 153-50(4) to determine compliance with the minimum standards for local confinement facilities adopted by the Social Services Commission. (1868-9, c. 170, s. 5; Code, s. 2335; Rev., s. 3917; 1917, c. 170, s. 1; C. S., s. 5008; 1957, c. 86; 1961, c. 186; 1969, c. 546, s. 1; 1973, c. 476, s. 138.)

Cross Reference. — As to juvenile detention services, see § 134-35 et seq.

Editor's Note. — The 1973 amendment substituted "Department of Human Resources" for "State Department of Social Services" and "Social Services Commission" for "State Board of Social Services."

Sections 153-50 and 153-51, referred to in the section above, were repealed by Session Laws 1973, c. 822.

§ 108-80. Approval of new facilities. — The Department of Human Resources shall, as authorized by G.S. 153-51, approve the plans for the construction or major modification of any local confinement facility. (1868-9, c. 170, s. 5; Code, s. 2335; Rev., s. 3917; 1917, c. 170, s. 1; C. S., s. 5008; 1957, c. 86; 1961, c. 186; 1969, c. 546, s. 1; 1973, c. 476, s. 138.)

Editor's Note. — The 1973 amendment substituted "Department of Human Resources" for "State Department of Social Services."

Section 153-51, referred to in this section, was repealed by Session Laws 1973, c. 822.

§ 108-81. Failure to provide information. — If the board of commissioners of any county, the chief of police of any municipality, or any officer or employee of any local confinement facility shall fail or refuse to furnish to the Department of Human Resources any information about any local confinement facility which is required by law to be furnished, or shall fail to allow the inspection of any such facility, such board or individual shall be guilty of a misdemeanor. (1869-70, c. 154, s. 3; Code, s. 2341; 1891, c. 491, s. 2; Rev., s. 3566; C. S., s. 5013; 1957, c. 100, s. 1; 1969, c. 546, s. 1; 1973, c. 476, s. 138.)

Editor's Note. — The 1973 amendment substituted "Department of Human Resources" for "State Department of Social Services."

§§ 108-82 to 108-86: Repealed by Session Laws 1969, c. 546, s. 1.

§§ 108-87 to 108-90: Reserved for future codification purposes.

ARTICLE 4.

Protection of the Abused or Neglected Elderly Act.

§ 108-91. Short title. — This Article may be cited as the Protection of the Abused or Neglected Elderly Act. (1973, c. 1378, s. 1.)

§ 108-92. Legislative intent and purpose. — Determined to protect the increasing number of elderly infirm persons in North Carolina who are abused or neglected, the General Assembly enacts this Article to provide protective services for such persons. (1973, c. 1378, s. 1.)

§ 108-93. Definitions. — (a) The word "caretaker" shall mean an individual who has the responsibility for the care of the elderly person as a result of family relationship or who has assumed the responsibility for the care of the elderly person voluntarily or by contract.

(b) The word "director" shall mean the director of the department of social services of the county in which the person resides or is found or his delegated representative.

(c) The words "elderly person" shall mean any person over the age of 65 who resides in the State of North Carolina.

(d) An "elderly person" shall be deemed to be "in need of protective services" if that person is unable to perform or obtain for himself services which are necessary to maintain his mental and physical health.

(e) The word "indigent" shall mean indigent as defined in G.S. 7A-450.

(f) The words "protective services" shall mean services provided by the State or other government or private organizations or individuals which are necessary to prevent abuse or neglect. Abuse shall include the willful infliction of physical pain, injury or mental anguish or the willful deprivation by a caretaker of services which are necessary to maintain mental and physical health. Neglect refers to an elderly person who is either living alone and not able to provide for himself the services which are necessary to maintain his mental and physical health or is not receiving the said services from his caretaker.

(g) The words "services which are necessary to maintain mental and physical health" shall include, but shall not be limited to, the provision of medical care for physical and mental health needs, assistance in personal hygiene, food, clothing, adequately heated and ventilated shelter, protection from health and safety hazards, protection from physical mistreatment, and transportation necessary to secure any of the above stated needs; provided that the words "services which are necessary to maintain mental and physical health" shall not include taking the person into physical custody without his consent except as provided for in G.S. 108-97(a) and in Chapter 122 of the General Statutes. (1973, c. 1378, s. 1.)

§ 108-94. Duty to report. — (a) Any person having reasonable cause to believe that an elderly person is in need of protective services shall report such information to the director.

(b) Anyone who makes a report pursuant to this statute or who testifies in any judicial proceeding arising from the report shall be immune from any civil or criminal liability on account of such report or testimony, unless such person acted in bad faith or with a malicious purpose. (1973, c. 1378, s. 1.)

§ 108-95. Duty of director upon receiving report. — Any director receiving a report that an elderly person is in need of protective services shall make a prompt and thorough evaluation to determine whether the elderly person is in need of protective services and what services are needed. The evaluation shall include a visit to the person and consultation with others having knowledge of the facts of the particular case. After completing the evaluation the director shall make a written report of the case indicating whether he believes protective services are needed and shall notify the individual making the report of his determination as to whether the elderly person needs protective services. (1973, c. 1378, s. 1.)

§ 108-96. Provision of protective services with the consent of the person. — (a) If the director determines that an elderly person is in need of protective

services, he shall immediately provide or arrange for the provision of protective services, provided that the elderly person consents.

(b) When a caretaker of an elderly person who consents to the receipt of protective services refuses to allow the provision of such services to the elderly person, the director may petition the district court for an order enjoining the caretaker from interfering with the provision of protective services to the elderly person. The petition must allege specific facts sufficient to show that the elderly person is in need of protective services and consents to the receipt of protective services and that the caretaker refuses to allow the provision of such services. If the judge finds that the elderly person is in need of protective services and that the caretaker refuses to allow the provision of such services, he may issue an order enjoining the caretaker from interfering with the provision of protective services to the elderly person.

(c) If an elderly person does not consent to the receipt of protective services, or if he withdraws his consent, the services shall not be provided, unless the director reasonably determines that the elderly person lacks capacity to consent, in which case he may seek court authorization to provide protective services pursuant to G.S. 108-97. (1973, c. 1378, s. 1.)

§ 108-97. Provision of protective services to elderly persons who do not have the capacity to consent. — (a) If the director reasonably determines that an elderly person is being abused or neglected and lacks capacity to consent to protective services, then the director may petition the district court for an order authorizing the provision of protective services. The petition must allege specific facts sufficient to show that the elderly person is in need of protective services and lacks capacity to consent to them.

(b) The court shall set the case for hearing within 14 days after the filing of the petition if sufficiently specific facts are alleged. The elderly person must receive at least five days' notice of the hearing. He has the right to be present and represented by counsel at the hearing. If the person is indigent or, in the determination of the judge, lacks the capacity to waive the right to counsel, then the court shall appoint counsel. If the person is indigent, the cost of representation shall be borne by the State. If the person is not indigent, the cost of representation by counsel shall be added to the court cost.

If, at the hearing, the judge finds that the elderly person is in need of protective services and lacks capacity to consent to protective services, he may issue an order authorizing the provision of protective services. This order may include the designation of an individual or organization to be responsible for the personal welfare of the person and for consenting to protective services in his behalf. No elderly person may be committed to a mental health facility under this Article.

(c) Emergency Orders prior to the Hearing. — If, on the basis of the facts alleged in the director's petition, the judge makes a preliminary finding that the elderly person lacks capacity to consent and will be in substantial danger of death or may suffer irreparable harm if protective services are not provided immediately, then the judge may issue an emergency order authorizing the immediate provision of protective services; but nevertheless the court shall proceed in accordance with subsection (b) of this section, and the emergency order shall have no force or effect after the required hearing. (1973, c. 1378, s. 1.)

§ 108-98. Motion in the cause. — Notwithstanding any finding by the court of lack of capacity of the elderly person pursuant to the procedures set forth in G.S. 108-97, the elderly person or the individual or organization designated to be responsible for the personal welfare of the elderly person shall have the right to bring a motion in the cause for review of an order issued pursuant to the procedures set forth in G.S. 108-97. (1973, c. 1378, s. 1.)

§ 108-99. Utilization of available services. — In performing the duties set forth in this Article, the director may utilize the staff of the county department of social services, the county health departments, or any other public or private agencies, or individuals who may be available. (1973, c. 1378, s. 1.)

§ 108-100. Privilege for confidential communications. — Notwithstanding any privilege for confidential communications between husband and wife, the judge at the hearing may compel testimony of either or both if he finds that such testimony is necessary to a proper administration of justice. (1973, c. 1378, s. 1.)

§ 108-101. Payment for protective services. — At the time the director, in accordance with the provisions of G.S. 108-95, makes an evaluation of the case reported, then it shall be determined, according to regulations set by the Social Services Commission, whether the individual is financially capable of paying for the protective services. If he is, he shall make reimbursement for the costs of providing the needed protective services. If it is determined that he is not financially capable of paying for such needed services, they shall be provided at no cost to the recipient of the services. (1973, c. 1378, s. 1.)

§§ 108-102 to 108-106: Reserved for future codification purposes.

ARTICLE 5.

Family Food Assistance Program.

§ 108-107. Creation of food-stamp program. — The Department of Human Resources may, not later than July 1, 1974, place into operation in each of the several counties of the State a food-stamp program as authorized by the Congress of the United States. The Department of Human Resources is designated as the State agency responsible for the supervision of such programs. The boards of county commissioners through the county departments of social services are held responsible for the administration and operation of the programs. (1973, c. 1441, s. 1.)

§ 108-108. Determination of eligibility. — Any person who believes that he or another person is eligible to receive food-stamp assistance may submit an application for such assistance to the county department of social services in the county in which the applicant resides. The application shall be made in such form and shall contain such information as the Social Services Commission may require. Upon receipt of an application for food-stamp assistance, the county department of social services shall make a prompt evaluation or investigation of the facts alleged in the application in order to determine the applicant's eligibility for such assistance and to obtain such other information as the Department of Human Resources may require. Upon the completion of such investigation, the county department of social services shall, within a reasonable period of time, determine eligibility. (1973, c. 1441, s. 1.)

§ 108-109. Appeals. — If an application is not acted upon by the county department of social services within a reasonable time after the filing of the application, or is denied in whole or in part, or if an award of food-stamp assistance is modified or cancelled, the applicant or recipient may appeal to the Department of Human Resources in the manner and form prescribed by the rules and regulations of the Social Services Commission. Each applicant or recipient shall be notified of his right to appeal when applying for assistance and upon any subsequent action of the county department of social services on his case. Any food-stamp-assistance applicant or recipient who is dissatisfied with the final adverse decision of the Department of Human Resources may file a petition within 30 days after receipt of written notice of such decision for a hearing in the Superior Court of Wake County or of the county from which the

case arose. Such court shall set the matter for a hearing within 30 days after receipt of such petition and after reasonable written notice to the Department of Human Resources, the county department of social services, and the appellant. The court may take testimony and examine into the facts of the case to determine whether the appellant is entitled to food-stamp assistance under federal and State law, and under the rules and regulations of the Social Services Commission. The court may affirm, reverse or modify the final order of the Department of Human Resources. (1973, c. 1441, s. 1.)

§ 108-110. Penalties for false representation. — (a) Whoever knowingly obtains, or attempts to obtain, or aids or abets any person to obtain by means of a willfully false statement or representation or by impersonation, or in any manner not authorized by this Article or the regulations issued pursuant thereto, any food coupons to which he is not entitled or food coupons of a greater value than that to which he is justly entitled, shall be guilty of a misdemeanor, and upon conviction or plea of guilty shall be fined or imprisoned or both in the discretion of the court.

(b) Whoever presents, or causes to be presented, food coupons for payment or redemption, knowing the same to have been received, transferred, or used in any manner in violation of the provisions of this Article or the regulations issued pursuant to this Article shall be guilty of a misdemeanor and upon conviction or plea of guilty shall be fined or imprisoned or both in the discretion of the court.

(c) Whoever receives any food coupon for any consumable item knowing that such food coupon was procured fraudulently under subsections (a) and/or (b) of this section shall be guilty of a misdemeanor and upon conviction or plea of guilty shall be fined or imprisoned or both at the discretion of the court.

(d) Whoever receives any food coupon for any consumable item whose exchange is prohibited by the United States Department of Agriculture shall be guilty of a misdemeanor and upon conviction or plea of guilty shall be fined or imprisoned or both at the discretion of the court. (1973, c. 1441, s. 1.)

§§ 108-111 to 108-115: Reserved for future codification purposes.

ARTICLE 6.

Economic Opportunity Agencies.

§ 108-116. Purpose. — It shall be the purpose of this Article to authorize and provide financial assistance to economic opportunity agencies in order to reduce levels of poverty and personal and family dependence, and to provide an opportunity and an incentive for greater cooperation among State and local agencies and institutions in attacking poverty, its causes and effects. (1973, c. 1318, s. 1.)

§ 108-117. Definitions. — (a) As used in this Article, the term "administrative costs" means costs incurred in the overall management of the agency, the fiscal control of the agency, and the planning, management, monitoring, coordination and evaluation of all programs and activities undertaken by the agency, including, but not limited to, the costs of salaries, travel, and general office expenses.

(b) As used in this Article, the term "operational costs" means costs incurred directly in the delivery of services to the recipient population of particular programs. (1973, c. 1318, s. 2.)

§ 108-118. Designation of administering agency; powers and responsibilities. — The Department of Human Resources ("Department") is directed to carry out the purposes and provisions of this Article. In carrying out this directive, the Department shall:

(1) Make grants to eligible economic opportunity agencies based on compliance with standards and criteria prescribed by OEO and in existence on June 30, 1973.

(2) Evaluate the use of State funds appropriated under this Article to economic opportunity agencies, and submit reports based on that evaluation to the General Assembly. These reports shall also include the Department's evaluation of conditions of economic dependence and poverty among the people of North Carolina, and among the people living in the geographical areas served by the economic opportunity agencies eligible to receive funds under this Article. In the preparation of these evaluations and reports, the Department shall solicit the comments and testimony of interested citizens of North Carolina including, but not limited to, representatives of the recipient (i.e., economically disadvantaged) populations served by the economic opportunity agencies eligible to receive State funds under this Article.

(3) Provide public information on the status of and the causes and effects of economic insufficiency among the people of the State; and

(4) Assist eligible economic opportunity agencies in securing federal, State, and private resources applicable to efforts aimed at promoting economic self-sufficiency and reducing individual and family economic dependence. (1973, c. 1318, s. 3.)

§ 108-119. Eligibility for State financial assistance. — The North Carolina Department of Human Resources is directed to allocate funds provided by this Article for basic administrative costs to agencies which on June 30, 1973, were receiving funds from OEO as community action agencies under 42 U.S.C.A. 2808, or their legal successors ("eligible agencies"). Caswell Action Committee, Inc., and Rockingham County Fund, Inc., are deemed to be eligible agencies for this purpose. (1973, c. 1318, s. 4.)

§ 108-120. Allocation of State financial assistance. — Funds to eligible agencies shall be allocated as follows:

(1) An eligible agency wishing to receive funds under this Article must apply to the Department for said funds within 60 days after notice of termination of funding provided to said eligible agency for administrative costs by OEO or its successor.

(2) As soon as possible after receiving an application for funding from an eligible agency, the Department shall make, and establish a time schedule for the disbursement of, an initial grant of twenty thousand dollars ($20,000) per annum to that agency.

(3) Within 90 days, but after 60 days from notice of termination by OEO of funding for the administrative costs of eligible agencies, the Department shall add to the foregoing initial grant an additional grant to each applicant agency, the amount to be determined by multiplying twenty thousand dollars ($20,000) times the number of applicant agencies, subtracting that result from eight hundred fifty thousand dollars ($850,000), and apportioning the remainder to each applicant agency according to the ratio of the population of the county or counties served by each applicant agency to the total population of all counties served by all applicant agencies. The latest official U.S. census figures shall be used in making this apportionment. The Department shall immediately notify each applicant agency of the amount of this additional grant, and shall incorporate this amount in the schedule of disbursements.

(4) All funds allocated under provisions of this Article shall be matched at the rate of twenty percent (20%) with nonstate resources either in cash or in kind, except in hardship cases previously designated by OEO as

requiring less than twenty percent (20%) matching funds, in which hardship cases the matching fund percentage rate established by OEO shall apply.

(5) In no event shall any agency's funds made available under provisions of this Article for basic administrative costs exceed fifty percent (50%) of that agency's operational costs.

(6) An otherwise eligible economic opportunity agency may qualify for funds under this Article only after notice of termination of funding provided for administrative costs by OEO or its successor. (1973, c. 1318, s. 5.)

§ 108-121. Authority for State departments to contract with or make grants to eligible economic opportunity agencies. — Whenever any State department deems it advisable, it may enter into contracts with eligible economic opportunity agencies for the organization and provision of services designed to reduce levels of personal and family dependence and to promote economic self-sufficiency and may make grants to these agencies for the costs of providing such services. (1973, c. 1318, s. 6.)

§ 108-122. Eligibility for local government assistance. — Counties, municipalities, and regional organizations may provide assistance, in addition to that provided for in this Article, to eligible economic opportunity agencies, any may enter into contracts with such agencies for the conduct of programs aimed at reducing levels of personal and family dependence and at improving the level of economic self-sufficiency of citizens including but not necessarily limited to programs involving development of community facilities and services, consumer education, manpower development, housing, early childhood development, area economic development, education, public transportation, and health and nutrition. (1973, c. 1318, s. 7.)

§ 108-123. Local government control. — Recognizing that programs administered by economic opportunity agencies should be controlled at the local government level, the boards of directors of all economic opportunity agencies receiving funds pursuant to this Article shall be constituted as follows:

(1) Each community action agency eligible for funding pursuant to G.S. 108-119, shall have a governing board which shall meet the requirements of subdivision (2) of this section.

(2) The board of each community action agency eligible to receive funds pursuant to G.S. 108-119 shall consist of not more than 51 members and shall be so constituted that:

a. Not less than one half nor more than two thirds of the members of the board shall be appointed by the board or boards of county commissioners in the county or counties served by the agency;

b. Not less than one third of the members of the board shall be chosen in accordance with democratic selection procedures adequate to assure that they are representative of the poor in the area served;

c. The remaining positions on the board, if any, shall be filled by officials or members of business, industry, labor, religious, welfare, education, or other major groups and interests in the community. (1973, c. 1318, s. 8.)

Chapter 109.

Bonds.

Article 1.

Official Bonds.

Sec.
109-1. Irregularities not to invalidate.
109-2. Penalty for officer acting without bond.
109-3. Condition and terms of official bonds.
109-4. When county may pay premiums on bonds.
109-5. Annual examination of bonds; security strengthened.
109-6. Effect of failure to renew bond.
109-7. Justification of sureties.
109-8. Compelling justification before judge; effect of failure.
109-9. Successor bonded; official bonds considered liabilities.
109-10. Judge to file statement of proceedings with commissioners.
109-11. Approval, acknowledgment and custody of bonds.
109-12. Clerk records vote approving bond; penalty for neglect.
109-13. When commissioner liable as surety.
109-14. Record of board conclusive as to facts stated.
109-15. Person required to approve bond not to be surety.

Article 2.

Bonds in Surety Company.

109-16. State officers may be bonded in surety company.
109-17. When surety company sufficient surety on bonds and undertakings.
109-18. Clerk to notify county commissioners of condition of company.
109-19. Release of company from liability.
109-20. Company not to plead ultra vires.
109-21. Failure to pay judgment is forfeiture.
109-22. On presentation of proper bond officer to be inducted.
109-23. Expense of fiduciary bond charged to fund.

Article 3.

Mortgage in Lieu of Bond.

109-24. Mortgage in lieu of required bond.
109-25. Mortgage in lieu of security for appearance, costs, or fine.
109-26. Cancellation of mortgage in such proceedings.
109-27. Validating statute.
109-28. Clerk of court may give surety by mortgage deposited with register.
109-29. Mortgage in lieu of bond to prosecute or defend in civil case.
109-30. Affidavit of value of property required.
109-31. When additional security required.

Article 4.

Deposit in Lieu of Bond.

109-32. Deposit of cash or securities in lieu of bond; conditions and requirements.

Article 5.

Actions on Bonds.

109-33. Bonds in actions payable to court officer may be sued on in name of State.
109-34. Liability and right of action on official bonds.
109-35. Complaint must show party in interest; election to sue officer individually.
109-36. Summary remedy on official bond.
109-37. Officer unlawfully detaining money liable for damages.
109-38. Evidence against principal admissible against sureties.
109-39. Officer liable for negligence in collecting debt.

Article 1.

Official Bonds.

§ 109-1. Irregularities not to invalidate. — When any instrument is taken by or received under the sanction of the board of county commissioners, or by any person or persons acting under or in virtue of any public authority, purporting to be a bond executed to the State for the performance of any duty belonging to any office or appointment, such instrument, notwithstanding any irregularity or invalidity in the conferring of the office or making of the appointment, or any variance in the penalty or condition of the instrument from the provision prescribed by law, shall be valid and may be put in suit in the name of the State for the benefit of the person injured by a breach of the condition thereof, in the same manner as if the office had been duly conferred or the appointment duly made, and as if the penalty and condition of the instrument

had conformed to the provisions of law: Provided, that no action shall be sustained thereon because of a breach of any condition thereof or any part of the condition thereof which is contrary to law. (1842, c. 61; R. C., c. 78, s. 9; 1869-70, c. 169, s. 16; Code, s. 1891; Rev., s. 279; C. S., s. 324.)

In General. — This section does not have the effect of introducing into an official bond provisions which are not, but ought to have been, inserted in the conditions, so as to extend the liabilities of the obligors; but the purpose is to cure certain defects and irregularities in conferring the office and accepting the instrument, and to maintain its validity as an official undertaking, as far as it goes, notwithstanding the penalty or condition may vary from those prescribed by law. State ex rel. Jordan v. Pool, 27 N.C. 105 (1844); State ex rel. Merrill v. McMinn, 29 N.C. 345 (1847); State ex rel. Murray v. Jones, 29 N.C. 359 (1847); Commissioners of Wake County v. Magnin, 86 N.C. 286 (1882). See also Midgett v. Nelson, 214 N.C. 396, 199 S.E. 393 (1938).

For article concerning contracts and referring generally to this section, see 13 N.C.L. Rev. 65.

Retroactive Operation. — The section had a retroactive operation. State ex rel. Jordan v. Pool, 27 N.C. 105 (1844); State ex rel. Murray v. Jones, 29 N.C. 359 (1847).

Official bonds should be liberally construed and any variance in the condition of such an instrument from the provisions prescribed by the law will usually be treated as an irregularity, in view of this section, but this principle does not abrogate the freedom of contract. City of Washington v. Trust Co., 205 N.C. 382, 171 S.E. 438 (1933).

Nor does this rule preclude the parties from contracting in the bond for liability for a shorter period than the official term of office of the principal. City of Washington v. Trust Co., 205 N.C. 382, 171 S.E. 438 (1933).

Validity as Common-Law or Voluntary Bonds. — A statutory bond, not duly executed, or not conditioned as required by statute, may be sustained as a common-law or voluntary bond. Chambers v. Witherspoon, 10 N.C. 42 (1824); Justices of Cumberland v. Armstrong, 14 N.C. 284 (1831); Justices of Currituck v. Dozier, 14 N.C. 287 (1831); Williams v. Ehringhaus, 14 N.C. 297 (1831); Vanhook v. Barnett, 15 N.C. 268 (1833); Davis v. Somerville, 15 N.C. 382 (1834); State ex rel. Davis v. McAlpin, 26 N.C. 140 (1843); Reid v. Humphreys, 52 N.C. 258 (1859).

County A.B.C. Board as Obligee. — The naming of county A.B.C. board as obligee in bond, rather than State, works no limitation of its character as official bond and affords no escape from its obligations as such. Jordan v. Harris, 225 N.C. 763, 36 S.E.2d 270 (1945).

Name of Constable Omitted. — Where a constable's official bond was signed by the obligors but a blank was left for the name of the constable, the omission was not cured by this section. Grier v. Hill, 51 N.C. 572 (1859).

Failure to Register Constable's Bond. — An irregularity, such as want of registration, will not, under this section, invalidate a constable's bond. Warren v. Boyd, 120 N.C. 56, 26 S.E. 700 (1897).

Failure to Name Conditions in Sheriff's Bond. — Failure to name conditions required by § 162-8, relating to sheriff's bonds, will not, under this section, invalidate the bond given. State ex rel. Bd. of Comm'rs v. Sutton, 120 N.C. 298, 26 S.E. 920 (1897).

Mistake in Name of Ward in Guardian's Bond. — Where, in the order of a county court appointing a guardian, the name Margaret is by mistake inserted as that of the ward instead of Miranda, a bond taken according to the proper requisitions, with the right name recited, will, under the operation of this section, be sustained as an official bond. Shuster v. Perkins, 46 N.C. 325 (1854).

No Penalty Named in Guardian's Bond. — Where defendants signed a bond intending to make it the guardian bond of their principal, but there was no penalty named in the bond the same being filled in subsequent to the signature, it was held that this section does not apply, as it is confined to bonds wherein the amount of penalty varies from that fixed by law, being either more or less than the amount. Rollins v. Ebbs, 137 N.C. 355, 49 S.E. 341 (1904); Rollins v. Ebbs, 138 N.C. 140, 50 S.E. 577 (1905).

Who May Sue. — The chairman of a board of fence commissioners, although not named in the tax collector's bond, may bring suit on the same under this section, when the latter fails to pay the money collected for the erection of fences. Speight v. Staton, 104 N.C. 44, 10 S.E. 86 (1889).

Where a register of deeds issued a license for the marriage of a girl under 18 without the consent of her father, the father is the person injured within the meaning of this section. Joyner v. Roberts, 112 N.C. 111, 16 S.E. 917 (1893).

Cited in Barnes v. Lewis, 73 N.C. 138 (1875).

§ 109-2. Penalty for officer acting without bond. — Every person or officer of whom an official bond is required, who presumes to discharge any duty of his office before executing such bond in the manner prescribed by law, is liable to a forfeiture of five hundred dollars ($500.00) to the use of the State for each

attempt so to exercise his office. (R. C., c. 78, s. 8; Code, s. 1882; Rev., s. 278; C. S., s. 325.)

Quoted in Langley v. Taylor, 245 N.C. 59, 95 S.E.2d 115 (1956).

Stated in Moffitt v. Davis, 205 N.C. 565, 172 S.E. 317 (1934).

§ 109-3. Condition and terms of official bonds. — Every clerk, treasurer, sheriff, coroner, register of deeds, surveyor, and every other officer of the several counties who is required by law to give a bond for the faithful performance of the duties of his office, shall give a bond for the term of the office to which such officer is chosen. (1869-70, c. 169; 1876-7, c. 275, s. 5; Code, s. 1874; 1895, c. 207, s. 4; 1899, c. 54, s. 54; Rev., s. 308; C. S., s. 326.)

Quoted in part in State ex rel. Cain v. Corbett, 235 N.C. 33, 69 S.E.2d 20 (1952).

Stated in Moffitt v. Davis, 205 N.C. 565, 172 S.E. 317 (1934).

§ 109-4. When county may pay premiums on bonds. — In all cases where the officers or any of them named in G.S. 109-3 are required to give a bond, the county commissioners of the county in which said officer or officers are elected are authorized and empowered to pay the premiums on the bonds of any and all such officer or officers. The board of commissioners of any county are further authorized and empowered to require individual or blanket bonds for any or all assistants, deputies or other persons regularly employed in the offices of any such county officer or officers, such bond or bonds to be conditioned upon faithful performance of duty, and, in the event of such requirement, to pay the premiums on such individual or blanket bonds. (1937, c. 440; 1953, c. 799.)

Local Modification. — Currituck: 1943, c. 269.

§ 109-5. Annual examination of bonds; security strengthened. — The bonds of the officers named in G.S. 109-3 shall be carefully examined on the first Monday in December of every year, and if it appears that the security has been impaired, or for any cause become insufficient to cover the amount of money or property or to secure the faithful performance of the duties of the office, then the bond shall be renewed or strengthened, the insufficient security increased within the limits prescribed by law, and the impaired security shall be made good; but no renewal, or strengthening, or additional security shall increase the penalty of said bond beyond the limits prescribed for the term of office. (1869-70, c. 169; 1876-7, c. 275, s. 5; Code, s. 1874; 1895, c. 207, s. 4; 1899, c. 54, s. 54; Rev., s. 308; C. S., s. 327.)

Cross References. — As to amount of bond of local finance officer, see § 159-29. As to amount of bond of sheriffs, see § 162-8. As to amount of bond of coroners, see § 152-3. As to amount of bond of registers of deeds, see § 161-4.

§ 109-6. Effect of failure to renew bond. — Upon the failure of any such officer to make such renewal of his bond, it is the duty of the board of commissioners, by an order to be entered of record, to declare his office vacant, and to proceed forthwith to appoint a successor, if the power of filling the vacancy in the particular case is vested in the board of commissioners; but if otherwise, the said board shall immediately inform the proper person having the power of appointment of the fact of such vacancy. (1869-70, c. 169, s. 2; Code, s. 1875; Rev., s. 309; C. S., s. 328.)

§ 109-7. Justification of sureties. — Every surety on an official bond required by law to be taken or renewed and approved by the board of commissioners shall take and subscribe an oath before the chairman of the board or some person authorized by law to administer an oath, that he is worth a certain sum (which shall be not less than one thousand dollars ($1,000)) over and above all his debts and liabilities and his homestead and personal property exemptions, and the sum thus sworn to shall in no case be less in the aggregate than the penalty of the bond. But nothing herein shall be construed to abridge the power of the said board of commissioners to require the personal presence of any such surety before the board when the bond is offered, or at such subsequent time as the board may fix, for examination as to his financial condition or other qualifications as surety. (1869-70, c. 169, s. 3; 1879, c. 207; Code, s. 1876; 1889, c. 7; 1891, c. 385; 1901, c. 32; Rev., s. 310; C. S., s. 329.)

Purpose — Contribution. — The intendment of this section was to provide a statement under oath to show the solvency of the sureties and afford information to the county commissioners under like sanction that the aggregate amount of the bond equaled the penalty required, and does not affect the doctrine of contribution as it relates to the rights of the sureties to contribution between themselves. Board of Comm'rs v. Dorsett, 151 N.C. 307, 66 S.E. 132 (1909).

Cited in State ex rel. Cole v. Patterson, 97 N.C. 360, 2 S.E. 262 (1887).

§ 109-8. Compelling justification before judge; effect of failure. — When oath is made before any judge of the superior court by five respectable citizens of any county within his district that after diligent inquiry made they verily believe that the bond of any officer of such county, which has been accepted by the board of commissioners, is insufficient either in the amount of the penalty or in the ability of the sureties, it is the duty of such judge to cause a notice to be served upon such officer requiring him to appear at some stated time and place and justify his bond by evidence other than that of himself or his sureties. If this evidence so produced fails to satisfy the judge that the bond is sufficient, both in amount and the ability of the sureties, he shall give time to the officer not exceeding 20 days, to give another bond, fixing the amount of the new bond, when there is a deficiency in that particular. And upon failure of the said officer to give a good bond to the satisfaction of the judge within the 20 days, the judge shall declare the office vacant, and if the appointment be with himself, he shall immediately proceed to fill the vacancy; and if not, he shall notify the persons having the appointing power that they may proceed as aforesaid. (1874-5, c. 120; Code, s. 1885; Rev., s. 316; C. S., s. 330.)

Cited in Mitchell v. Kilburn, 74 N.C. 483 (1876).

§ 109-9. Successor bonded; official bonds considered liabilities. — The person so appointed shall give bond before the judge, and the bond so given shall in all respects be subject to the requirements of the law in relation to official bonds; and all official bonds shall be considered debts and liabilities within the meaning of G.S. 109-7. (1874-5, c. 120, s. 2; Code, s. 1886; Rev., s. 317; C. S., s. 331.)

§ 109-10. Judge to file statement of proceedings with commissioners. — When a vacancy is declared by the judge, he shall file a written statement of all his proceedings with the clerk of the board of commissioners, to be recorded by him. (1874-5, c. 120, s. 3; Code, s. 1887; Rev., s. 318; C. S., s. 332.)

§ 109-11. Approval, acknowledgment and custody of bonds. — The approval of all official bonds taken or renewed by the board of commissioners shall be recorded by their clerk. Every such bond shall be acknowledged by the

parties thereto or proved by a subscribing witness, before the chairman of the board of commissioners, or before the clerk of the superior court, registered in the register's office in a separate book to be kept for the registration of official bonds, and the original bond, with the approval of the commissioners endorsed thereon and certified by their chairman, shall be deposited with the clerk of the superior court, except the bond of said clerk, which shall be deposited with the register of deeds, for safekeeping. Provided that an official bond executed as surety by a surety company authorized to do business in this State need not be acknowledged upon behalf of the surety when such bond is executed under seal in the name of the surety by an agent or attorney-in-fact by authority of a power of attorney duly recorded in the office of the register of deeds of such county and such bond may be recorded by the register of deeds without an order of probate entered by the clerk of the superior court. (1869-70, c. 169, s. 4; 1879, c. 207, s. 2; Code, s. 1877; Rev., s. 311; C. S., s. 333; 1957, c. 1011.)

§ 109-12. Clerk records vote approving bond; penalty for neglect. — It is the duty of the clerk of the board of commissioners to record in the proceedings of the board the names of those commissioners who are present at the time of the approval of any official bond, and who vote for such approval. Every clerk neglecting to make such record, besides other punishment, shall forfeit his office. Any commissioner may cause his written dissent to be entered on the records of the board. (1790, c. 327, P. R.; 1809, c. 777, P. R.; R. C., c. 78, s. 7; 1869-70, c. 169, s. 8; Code, s. 1881; Rev., s. 314; C. S., s. 336.)

Editor's Note. — This section serves to show the light in which individual responsibility is regarded by the legislature. See Rawls v. Deans, 11 N.C. 299 (1826).

§ 109-13. When commissioner liable as surety. — Every commissioner who approves an official bond, which he knows to be, or which by reasonable diligence he could have discovered to have been, insufficient in the penal sum, or in the security thereof, shall be liable as if he were a surety thereto, and may be sued accordingly by any person having a cause of action on said bond. (1869-70, c. 169, s. 6; Code, s. 1879; Rev., s. 313; C. S., s. 335.)

Supplements § 162-12. — This section supplements and somewhat extends the provision of § 162-12, relating to the liability of sureties on a sheriff's bond. Hudson v. McArthur, 152 N.C. 445, 67 S.E. 995 (1910).

Liable to All Persons Injured. — Construing this section and former § 153-9 together, it is held that the county commissioners may be held individually liable by a person sustaining loss by reason of their failure to perform their ministerial duty of requiring bond of a clerk of the superior court. Moffitt v. Davis, 205 N.C. 565, 172 S.E. 317 (1934).

Joinder of Parties and Causes of Action. — See Ellis v. Brown, 217 N.C. 787, 9 S.E.2d 467 (1940).

Cited in State ex rel. Cole v. Patterson, 97 N.C. 360, 2 S.E. 362 (1887), to show how stringently the obligation of seeing to the sufficiency of the bond is enforced.

§ 109-14. Record of board conclusive as to facts stated. — In all actions under G.S. 109-13 a copy of the proceedings of the board of commissioners in the particular case, certified by their clerk under his hand and the seal of the county, is conclusive evidence of the facts in such record alleged and set forth. (1869-70, c. 169, s. 8; Code, s. 1881; Rev., s. 314; C. S., s. 336.)

§ 109-15. Person required to approve bond not to be surety. — No member of the board of commissioners, or any other person authorized to take official bonds, shall sign as surety on any official bond upon the sufficiency of which the board of which he is a member may have to pass. (1874-5, c. 120, s. 3; Code, s. 1887; Rev., s. 315; C. S., s. 337.)

ARTICLE 2.

Bonds in Surety Company.

§ 109-16. State officers may be bonded in surety company. — All persons who are required to give bond to the State of North Carolina to be received by the Governor or by any department of the State government, in lieu of personal security, may give as security for said bond and for the performance of the duties named in the said bond any indemnity or guaranty company authorized to do business in the State of North Carolina, subject to such regulations as the Governor or department may prescribe, and with power in them to demand additional security at any time. Any person presenting any indemnity or guaranty company as surety shall accompany his bond with a statement of the Insurance Commissioner as to the condition of such company as required by law. (1901, c. 754; Rev., s. 272; C. S., s. 338.)

Bond Construed against Company. — A surety bond shall be construed most strongly against the company and most favorably to its general intent and essential purpose. Bank of Tarboro v. Fidelity & Deposit Co., 128 N.C. 366, 38 S.E. 908 (1901), discussing compliance with requirement of notice of default.

§ 109-17. When surety company sufficient surety on bonds and undertakings. — A bond or undertaking by the laws of North Carolina required or permitted to be given by a public official, fiduciary, or a party to an action or proceeding, conditioned for the doing or not doing of an act specified therein, shall be sufficient when it is executed or guaranteed by a corporation authorized in this State to act as guardian or trustee, or to guarantee the fidelity of persons holding places of public or private trust, or to guarantee the performance of contracts, other than insurance policies, or to give or guarantee bonds and undertakings in actions or proceedings.

The bond or undertaking of a corporation having such power shall be sufficient, although the law or regulation in accordance with which it is given requires two or more sureties, or requires the sureties to be residents or freeholders. But the clerk of the superior court may exercise his discretion as to accepting such a corporation's surety on the bonds of fiduciaries or parties to actions or proceedings. (1895, c. 270; 1899, c. 54, s. 45; 1901, c. 706; Rev., s. 273; C. S., s. 339.)

Same Liability as an Individual. — A surety corporation allowed by this section to give guardian bonds is held to the same liability on a bond given by it as an individual would be, and is responsible to the ward when the guardian's failure to properly perform his duties causes loss to the ward's estate. State ex rel. Roebuck v. National Sur. Co., 200 N.C. 196, 156 S.E. 531 (1931).

Cited in Pierce v. Pierce, 197 N.C. 348, 148 S.E. 438 (1929).

§ 109-18. Clerk to notify county commissioners of condition of company. — Each clerk of the superior court shall furnish the chairman of the board of county commissioners of his county with notice of each surety company licensed in this State, and of each surety company whose license has been revoked, in which any officer of the county has been bonded. (Rev., ss. 295, 4803; C. S., s. 340.)

§ 109-19. Release of company from liability. — A company executing such bond, obligation or undertaking, may be released from its liability or security on the same terms as are or may be by law prescribed for the release of

individuals upon any such bonds, obligations or undertakings. (1899, c. 54, s. 48; Rev., s. 274; C. S., s. 341.)

Company May Be Released Only by Getting Off Bond. — Under this section a surety company can be released from its liability on a bond only by getting off the bond. Bank of Tarboro v. Fidelity & Deposit Co., 128 N.C. 366, 38 S.E. 908 (1901).

Defalcations after Expiration of Term of Office. — A surety company is not liable for defalcations committed after the expiration of the term of office to which the bond refers. Blades v. Dewey, 136 N.C. 176, 48 S.E. 627 (1904).

§ 109-20. Company not to plead ultra vires. — Any company which executes any bond, obligation or undertaking under the provisions of this Article is estopped, in any proceeding to enforce the liability which it assumes to incur, to deny its corporate power to execute such instrument or assume such liability. (1899, c. 54, s. 49; 1901, c. 706, s. 1, subsec. 5; Rev., s. 275; C. S., s. 342.)

§ 109-21. Failure to pay judgment is forfeiture. — If a surety company against which a judgment is recovered fails to discharge the same within 60 days from the time such final judgment is rendered, it shall forfeit its right to do business in this State, and the Insurance Commissioner shall cancel its license. (1901, c. 706, s. 1, subsec. 5; Rev., s. 275; C. S., s. 343.)

§ 109-22. On presentation of proper bond officer to be inducted. — Upon presentation to the person authorized by law to take, accept and file official bonds, of any bond duly executed in the penal sum required by law by the officer chosen to any such office, as principal, and by any surety company, as security thereto, whose insurance or guaranty is accepted as security upon the bonds of United States bonded officials (such insurance company having complied with the insurance laws of the State of North Carolina), or by any other good and sufficient security thereto, such bond shall be received and accepted as sufficient, and the principal thereon shall be inducted into office. (1899, c. 54, s. 53; 1901, c. 706, s. 1, subsec. 5; Rev., s. 276; C. S., s. 344.)

Estoppel to Deny Validity of Bond. — Although the failure of the treasurer to sign a bond was an irregularity under this section, both the treasurer and the surety recognized their liability thereon by offering a second bond in substitution, and both were estopped to deny the validity of the first bond on the ground of such irregularity. State ex rel. Bd. of Comm'rs v. Inman, 203 N.C. 542, 166 S.E. 519 (1932).

§ 109-23. Expense of fiduciary bond charged to fund. — A receiver, assignee, trustee, committee, guardian, executor or administrator, or other fiduciary required by law to give a bond as such, may include as part of his lawful expenses such sums paid to such companies for such suretyship to the extent of bond premiums actually paid per annum on the account of such bonds as the clerk, judge or court may allow. (1901, c. 706, s. 1, subsec. 5; Rev., s. 277; C. S., s. 345; 1939, c. 382.)

ARTICLE 3.

Mortgage in Lieu of Bond.

§ 109-24. Mortgage in lieu of required bond. — An administrator, executor, guardian, collector or receiver, or an officer required to give an official bond, or the agent or surety of such person or officer, may execute a mortgage on real estate, of the value of the bond required to be given by him to the State of North Carolina, conditioned to the same effect as the bond should be, were

the same given, with a power of sale, which power of sale may be executed by the clerk of the superior court, with whom said mortgage shall be deposited, upon a breach of any of the conditions of said mortgage, after advertisement for 30 days. (1874-5, c. 103, s. 2; Code, s. 118; Rev., s. 265; C. S., s. 346.)

Mortgage of Intestate's Property. — A mortgage by an administrator on property of his intestate to which the administrator is heir does not comply with an order to increase the bond as such a mortgage does not increase the penalty. Sellars v. Faulk, 118 N.C. 573, 24 S.E. 430 (1896).

Failure to Record. — The mortgage or deed in trust permitted by this section, to be given in lieu of an official bond, is, as to proper registration, to be regarded as a mortgage, or deed in trust, and accordingly registered as the law requires, construing the statute strictly, as required; and its entry upon the records in the clerk's office as a bond, alone, without recording it in its proper place as a mortgage is insufficient to give notice to, or priority of lien, over a deed of a subsequent purchaser of the land. Hooper v. Tallassee Power Co., 180 N.C. 651, 105 S.E. 327 (1920).

§ 109-25. Mortgage in lieu of security for appearance, costs, or fine. — Any person required to give a bond or undertaking, or required to enter into a recognizance for his appearance at any court, in any criminal proceeding, or for the security of any costs or fine in any criminal action, may also execute a mortgage on real or personal property of the value of such bond or recognizance, payable to the State of North Carolina, conditioned as such bond or recognizance would be required, with power of sale, which power shall be executed by the clerk in whose court said mortgage is executed, upon a breach of any of the conditions of said mortgage.

No such mortgage on real property executed for the security for costs or fine shall allow a longer time for payment of said costs or fine than six months from the execution thereof, and no mortgage on personal property a longer time than three months, except in cases of appeal, when the time allowed shall be counted from the date of the final decision in the cause.

All legitimate expenses of sale, which shall only be made after due advertisement according to law, shall be paid out of the proceeds of the sale. (1874-5, c. 103, s. 3; Code, s. 120; 1891, c. 425, ss. 1, 2, 3; Rev., s. 266; C. S., s. 347; 1973, c. 108, s. 57.)

Editor's Note. — The 1973 amendment deleted "or justice of the peace" following "clerk" in the first paragraph, deleted the former second paragraph relating to mortgages executed before a justice, and rewrote the last paragraph so as to eliminate provisions relating to fees for clerks and justices.

Applicability to Justice's Court. — This section, as it read in the Code of 1883, had no application in courts of justices of the peace. Comron v. Standland, 103 N.C. 207, 9 S.E. 317 (1889).

Foreclosure and Sale. — The clerk of the superior court may foreclose a mortgage on land given by plaintiff to secure costs of his action when the costs are awarded against him, or the clerk may report the matter to the court for a decree of sale by himself, the latter being the better practice to insure a safer title and prevent a needless sacrifice. Clark v. Fairly, 175 N.C. 342, 95 S.E. 550 (1918).

When the superior court, in term, acting through the presiding judge, has duly acquired jurisdiction to decree foreclosure, it is his duty to supervise the sale and see that the land brings a fair price; and when such sale has not been made accordingly, he may set aside the sale, and permit the plaintiff to pay the costs properly chargeable against him. Clark v. Fairly, 175 N.C. 342, 95 S.E. 550 (1918).

It is proper for the court to confirm the sale, and possibly it is necessary for him to do so. Clark v. Fairly, 175 N.C. 342, 95 S.E. 550 (1918).

A decree of confirmation of the sale of lands to pay the cost of an action under a mortgage given to secure them, under this section, may be set aside by the judge during the term of the superior court at which it was entered. Clark v. Fairly, 175 N.C. 342, 95 S.E. 550 (1918).

Cited in State ex rel. Solicitor v. Jenkins, 121 N.C. 637, 28 S.E. 413 (1897).

§ 109-26. Cancellation of mortgage in such proceedings. — Any mortgage given by any person in lieu of bond as administrator, executor, guardian, collector, receiver or as an officer required to give an official bond, or as agent or surety of such person or officer, or in lieu of bond or undertaking or recognizance for his appearance at any court in any criminal proceeding, or for the security of any cost or fine in a criminal action which has been registered, when such party as administrator, executor, guardian, collector, or receiver has filed his final account and when the time required by statute for the bond given by any administrator, executor, guardian, collector, or receiver to remain in force for the purpose of action thereon has expired, or when the officer required to give an official bond has fully complied with the conditions of such bond and the time within which suit is allowed by law to be brought thereon has expired, or when the person giving such mortgage in lieu of bond has made his appearance at the court to which he was bound and did not depart the court without leave, or paid the cost or fine required, may be canceled or discharged by the clerk of the superior court of the county where such action was pending or where the mortgage in lieu of bond is recorded by entry of "satisfaction" upon the margin of the record where such mortgage is recorded in the presence of the register of deeds, or his deputy, who shall subscribe his name as a witness thereto, and such cancellation shall have the effect to discharge and release all the right, title and interest of the State of North Carolina in and to the property described in such mortgage. (1905, c. 106; Rev., s. 267; C. S., s. 348; 1921, c. 29, ss. 1, 2; 1925, c. 252, s. 1.)

§ 109-27. Validating statute. — All acts heretofore done by the several superior court clerks, canceling or satisfying any mortgage, or other instruments, herein mentioned and specified are hereby validated. (1925, c. 252, s. 2.)

§ 109-28. Clerk of court may give surety by mortgage deposited with register. — In all cases where the clerk of the superior court may be required to give surety, he may deposit a mortgage with the register of deeds, payable to the State, and conditioned, as the bond would have been required, with power of sale. The power of sale shall be executed by the register of deeds, upon a breach of any of the conditions of said mortgage; and the register of deeds shall in all cases immediately register the same, at the expense of the said clerk. (1874-5, c. 103, s. 6; Code, s. 122; Rev., s. 268; C. S., s. 349.)

§ 109-29. Mortgage in lieu of bond to prosecute or defend in civil case. — It is lawful for any person desiring to commence any civil action or special proceeding, or to defend the same, his agent or surety, to execute a mortgage on real estate of the value of the bond or undertaking required to be given, at the beginning of said action, or at any stage thereof, to the party to whom the bond or undertaking would be required to be made, conditioned to the same effect as such bond or undertaking, with power of sale, which power of sale may be executed upon a breach of any of the conditions of the said mortgage after advertisement for 30 days. (1874-5, c. 103, s. 1; Code, s. 117; Rev., s. 269; C. S., s. 350.)

Editor's Note. — For note on the North Carolina public assistance lien law and current constitutional doctrine, see 49 N.C.L. Rev. 519 (1971).

For comment on access of indigents into the civil courtroom, see 49 N.C.L. Rev. 683 (1971).

Section Strictly Observed. — This section is exceptional in its provisions, and must be strictly observed. Eshon v. Board of Comm'rs, 95 N.C. 75 (1886).

Undertaking on Appeal. — If it be granted that this section applies to an undertaking on appeal, the section was not complied with where the appellant deposited with the clerk a bond due to himself and secured by a mortgage as a substitute for the undertaking. Eshon v. Board of Comm'rs, 95 N.C. 75 (1886).

Section Does Not Require Mortgage. — This section does not authorize the court to require

a party to execute a mortgage of real estate in the case therein provided for. It simply allows the party of whom an undertaking may be required in such cases to give such mortgage instead of it, and the former must be for the same amount as the latter. Wilson v. Fowler, 104 N.C. 471, 10 S.E. 566 (1889).

Not Applicable to Justice's Court. — This section has no application in courts of justices of the peace. Comron v. Standland, 103 N.C. 207, 99 S.E. 317 (1889).

Third Person Executing Mortgage for Defendant. — Where a mortgage is given by a third person for the defendant in an action, as is permitted by this section, and the mortgagor subsequently purchases a part of the mortgaged property, it was held, upon the plaintiff's recovering from the defendant, that the mortgagor has no such interest as will allow him to interfere with the plaintiff's rights under his judgment. Ryan v. Martin, 104 N.C. 176, 10 S.E. 169 (1889).

§ 109-30. Affidavit of value of property required. — In all cases where a mortgage is executed, as hereinbefore permitted, it is the duty of the clerk of the court in which it is executed to require an affidavit of the value of the property mortgaged to be made by at least one witness not interested in the matter, action or proceeding in which the mortgage is given. (1874-5, c. 103, s. 4; Code, s. 121; Rev., s. 270; C. S., s. 351; 1973, c. 108, s. 58.)

Editor's Note. — The 1973 amendment deleted "or of the justice" following "court in which it is executed."

§ 109-31. When additional security required. — If, from any cause, the property mortgaged in lieu of a bond becomes of less value than the amount of the bond in lieu of which the mortgage is given, and it so appears upon affidavit of any person having any interest in the matter as a security for which the mortgage was given, it is the duty of the mortgagor to give additional security by a deposit of money, or the execution of a mortgage on more property, or justify as required in cases where bond or undertaking is given. (1874-5, c. 103, s. 5; Code, s. 119; Rev., s. 271; C. S., s. 352.)

ARTICLE 4.

Deposit in Lieu of Bond.

§ 109-32. Deposit of cash or securities in lieu of bond; conditions and requirements. — In lieu of any written undertaking or bond required by law in any matter, before any court of the State, the party required to make such undertaking or bond may make a deposit in cash or securities of the State of North Carolina or of the United States of America, of the amount required by law or, in the case of fiduciaries, of the amount of the trust, in lieu of the said undertaking or bond and such deposit shall be subject to all of the same conditions and requirements as are provided for in written undertakings or bonds, in lieu of which such deposit is made. (1923, c. 58; C. S., s. 352(a); 1947, c. 936.)

Editor's Note. — For comment on this section, see 1 N.C.L. Rev. 283; 25 N.C.L. Rev. 384.

ARTICLE 5.

Actions on Bonds.

§ 109-33. Bonds in actions payable to court officer may be sued on in name of State. — Bonds and other obligations taken in the course of any proceeding

at law, under the direction of the court, and payable to any clerk, commissioner, or officer of the court, for the benefit of the suitors in the cause, or others having an interest in such obligation, may be put in suit in the name of the State. (R. C., c. 13, s. 11; Code, s. 51; Rev., s. 280; C. S., s. 353.)

Quoted in Lackey v. Pearson, 101 N.C. 651, 8 S.E. 121 (1888).

§ 109-34. Liability and right of action on official bonds. — Every person injured by the neglect, misconduct, or misbehavior in office of any clerk of the superior court, register, entry taker, surveyor, sheriff, coroner, county treasurer, or other officer, may institute a suit or suits against said officer or any of them and their sureties upon their respective bonds for the due performance of their duties in office in the name of the State, without any assignment thereof; and no such bond shall become void upon the first recovery, or if judgment is given for the defendant, but may be put in suit and prosecuted from time to time until the whole penalty is recovered; and every such officer and the sureties on his official bond shall be liable to the person injured for all acts done by said officer by virtue or under color of his office. (1793, c. 384, s. 1, P. R.; 1825, c. 9, P. R.; 1833, c. 17; R. C., c. 78, s. 1; 1869-70, c. 169, s. 10; Code, s. 1883; Rev., s. 281; C. S., s. 354; 1973, c. 108, s. 59.)

Cross Reference. — As to surety waiving his rights under §§ 109-33 through 109-35 by appearing and answering in a summary proceeding, see § 109-36 and the note thereto.

Editor's Note. — The 1973 amendment deleted "constable" following "coroner" near the beginning of the section.

Leave of Court Unnecessary. — The section gives in express terms the right to bring one or more suits upon one or more of the bonds to "every injured person," not on leave from the court, but absolutely and unconditionally so soon as the breach occurs, except that it is to be instituted in the name of the State. Boothe v. Upchurch, 110 N.C. 62, 14 S.E. 642 (1892); Reid v. Holden, 242 N.C. 408, 88 S.E.2d 125 (1955).

Sections Construed Together. — This section and § 109-37 relate to the same subject matter, are part of one and the same statute, and must be construed together. State ex rel. Underwood v. Watson, 223 N.C. 437, 27 S.E.2d 144 (1943).

Remedies against Superior Court Clerks. — North Carolina statutes provide two separate and distinct remedies against clerks of the superior court — one in behalf of the injured individual for a specific fund to which he is entitled or on account of a particular wrong committed against him by the officer, as provided in this section; and one in behalf of the new clerk against his predecessor in office to recover possession of records, books, papers and money in the hands of the outgoing clerk by virtue or under color of his office, as provided for in former § 2-22. State ex rel. Underwood v. Watson, 223 N.C. 437, 27 S.E.2d 144 (1943).

This section is not repugnant to the provisions of former § 2-22, which required that each successive clerk shall receive from his predecessor all the records, moneys, and property of his office, but only gives an additional remedy for the benefit of individuals who have cause of complaint against an unfaithful clerk of the superior court. Peebles v. Boone, 116 N.C. 57, 21 S.E. 187 (1895). For present provisions similar to former § 2-22, see § 7A-106.

The failure of a register of deeds to properly index the registry of a mortgage renders him liable on his official bond to one injured by such neglect. State ex rel. Daniel v. Grizzard, 117 N.C. 105, 23 S.E. 93 (1895).

Person Injured. — The father of a girl under 18, to whom a marriage license has been issued without the father's consent, is the person injured within the meaning of this section. Joyner v. Roberts, 112 N.C. 111, 16 S.E. 917 (1893).

Under this section, claimants of a fund arising from a partition sale are the proper parties to sue on bond of the clerk for failure of the clerk to pay funds turned over to him by the commissioners in partition. Smith v. Patton, 131 N.C. 396, 42 S.E. 849 (1902).

An action can be maintained by the clerk of a superior court in his own name upon the official bond of the sheriff, for the recovery of costs accrued in such court and collected by the sheriff, and due and payable to said clerk and others. Jackson v. Maultsby, 78 N.C. 174 (1878).

By Virtue or under Color of Office. — The last clause of this section is very comprehensive in its terms, scope and purpose. It, on purpose, enlarges the compass of the conditions of official bonds and their purpose, and the legislature intended by it, it seems, to prevent an evil pointed out in two or three of the cases. There were no

adequate reasons why the conditions of official bonds should not extend to and embrace all the official duties of the office, and there were serious ones of justice and policy why they should. All persons interested are bound to accept the official services of such officers, as occasion may require, and they should be made secure in their rights, and have adequate remedy for wrongs done by them. Besides all public officers should be held to a faithful discharge of their duties as such. It is singular that the clause last recited, notwithstanding a well known evil to be remedied, was not enacted until 1883. It first appears as part of the Code. Now official bonds and the conditions of them embrace and extend to all acts done by virtue or under color of office of the officer giving the bond. Thomas v. Connelly, 104 N.C. 342, 10 S.E. 520 (1889); Kivett v. Young, 106 N.C. 567, 10 S.E. 1019 (1890).

In State ex rel. Wimmer v. Leonard, 68 F.2d 228 (4th Cir. 1934) a sheriff's bond contained a condition limiting the faithful execution of the office to specific duties such as execution of process and in view of this, and the wording of this section, the bond was held to afford no basis for a recovery by a person whom the sheriff wounded while acting in his official capacity.

This section extends the liability on the sheriff's general official bond and imposes liability for wrongful arrest and the use of excessive force in making an arrest under color of office. Price v. Honeycutt, 216 N.C. 270, 4 S.E.2d 611 (1939).

The surety on a bond of a delinquent tax collector is not liable for an arrest made by the collector in order to force the payment of a delinquent tax, since such act of the tax collector is not done under color of his office and does not come within the condition of the bond that he should "well and truly perform all the duties of his said office." Henry v. Wall, 217 N.C. 365, 8 S.E.2d 223, 127 A.L.R. 854 (1940).

Same — Acts Which Should Have Been Performed. — It is true that the clause seems in terms to provide only for acts done by the officer, and not for those which he should do but does not. But it would be putting a very narrow construction on the statute to say that he and his sureties are liable for what he did, but not for what he should have done and did not do, although the damage to the party was equally as great. State ex rel. Daniel v. Grizzard, 117 N.C. 105, 23 S.E. 93 (1895).

Same — Illustrative Acts. — Where a clerk appointed the commissioner to make a partition sale, without bond, and on approving his report received and receipted the proceeds as clerk, took out his costs and entered the amount due each heir at law on his docket, and disbursed a portion of said fund to the parties entitled, this would seem to be a receipt of the fund by the clerk "by virtue of his office." The Judges v. Deans, 9 N.C. 93 (1822); McNeill v. Morrison, 63 N.C. 508 (1869); Cox v. Blair, 76 N.C. 78 (1877). But if this were otherwise the clerk received it "as clerk," and so receipted for it. This was certainly a receipt of the money "under color of his office," and, indeed, this is admitted in the answer. The older decisions were made when these words were not in the statute. The clause embraces all cases where the officer received the money in his official capacity, but when he may not be authorized or required to receive the same. In such case the bond is responsible for the safe custody of the fund so paid in. Smith v. Patton, 131 N.C. 396, 42 S.E. 849 (1902), citing Broughton v. Haywood, 61 N.C. 380 (1867); Greenlee v. Sudderth, 65 N.C. 470 (1871); Brown v. Coble, 76 N.C. 391 (1877); Ex parte Cassidey, 95 N.C. 225 (1886); Thomas v. Connelly, 104 N.C. 342, 10 S.E. 520 (1889); Sharpe v. Connelly, 105 N.C. 87, 11 S.E. 177 (1890); Presson v. Boone, 108 N.C. 78, 12 S.E. 897 (1891).

Under this section the official bond of a constable is liable for the false imprisonment of a person by a constable, as such, without process or color thereof. Warren v. Boyd, 120 N.C. 56, 26 S.E. 700 (1897).

When the clerk of the superior court is appointed receiver of a minor's estate, he takes and holds the funds by virtue of his office of clerk, and his sureties upon his official bond as such officer are liable for any failure of duty on his part in that respect. Boothe v. Upchurch, 110 N.C. 62, 14 S.E. 642 (1892).

Bonds Cumulative. — Official bonds given by an officer during any one term of office are cumulative, and the new bond does not discharge the old case. Oats v. Bryan, 14 N.C. 451 (1832); Bell's Adm'r v. Jasper, 37 N.C. 597 (1843); Poole v. Cox, 31 N.C. 69, 49 Am. Dec. 410 (1848); Moore v. Boudinot, 64 N.C. 190 (1870); Pickens v. Miller, 83 N.C. 544 (1880); Fidelity & Deposit Co. v. Fleming, 132 N.C. 332, 43 S.E. 899 (1903).

Where the surety has renewed the bond of a clerk of the court upon his election to that office a second time, acknowledged its liability and received premiums thereon, its liability is cumulative for all defalcations thereunder, whether for the second term its principal was continuing to act de facto or de jure. Lee v. Martin, 186 N.C. 127, 118 S.E. 914 (1923).

The first bonds continue to be a security for the discharge of the duties during the whole term, and the new bonds become additional security for the discharge of such of the duties as have not been performed at the time they are given. Poole v. Cox, 31 N.C. 69, 49 Am. Dec. 410 (1848). See also Oats v. Bryan, 14 N.C. 451 (1832); Bell's Adm'r v. Jasper, 37 N.C. 597 (1843).

Action on Bond and on Case. — An action of debt on a sheriff's bond for money collected, and a nonsuit therein, is a sufficient demand to enable the plaintiff to sustain an action on the case for the same cause of action. Fagan v. Williamson, 53 N.C. 433 (1862).

Negligent Conduct of Jailer Imputed to Sheriff. — Under this section the sheriff and the surety on his official bond are liable for the wrongful death of a prisoner resulting from the negligence of the jailer in locking the prisoner, in the weakened condition, in a cell with a person whom the sheriff and the jailer knew to be violently insane, and who assaulted the prisoner during the night, inflicting the fatal injury. Dunn v. Swanson, 217 N.C. 279, 7 S.E.2d 563 (1940). For note on this case, see 19 N.C.L. Rev. 101.

Necessary Parties in Action against Deputy Sheriff. — If the defendant were acting in the capacity of deputy sheriff at the time of the alleged assault and false arrest, he and the surety on his bond, and the sheriff and the surety on his bond, would be proper and necessary parties to the action based on the cause of action for the alleged assault and false arrest. State ex rel. Cain v. Corbett, 235 N.C. 33, 69 S.E.2d 20 (1952).

Applied in Bank of Spruce Pine v. McKinney, 209 N.C. 668, 184 S.E. 506 (1936).

Cited in Midgett v. Nelson, 214 N.C. 396, 199 S.E. 393 (1938); Davis v. Moore, 215 N.C. 440, 2 S.E.2d 366 (1939); Jordan v. Harris, 225 N.C. 763, 36 S.E.2d 270 (1945); State ex rel. West v. Ingle, 269 N.C. 447, 152 S.E.2d 476 (1967).

§ 109-35. Complaint must show party in interest; election to sue officer individually. — Any person who brings suit in manner aforesaid shall state in his complaint on whose relation and in whose behalf the suit is brought, and he shall be entitled to receive to his own use the money recovered; but nothing herein contained shall prevent such person from bringing at his election an action against the officer to recover special damages for his injury. (1793, c. 384, ss. 2, 3, P. R.; R. C., c. 78, s. 2; 1869-70, c. 169, s. 11; Code, s. 1884; Rev., s. 282; C. S., s. 355.)

The relator is the real party in interest in an action brought in the name of the State on an official bond, and he will be so considered in determining the identity of the parties under a plea of res judicata in a subsequent action. Reid v. Holden, 242 N.C. 408, 88 S.E.2d 125 (1955).

Cited in Western Carolina Power Co. v. Yount, 208 N.C. 182, 179 S.E. 804 (1935).

§ 109-36. Summary remedy on official bond. — When a sheriff, coroner, clerk, county or town treasurer, or other officer, collects or receives any money by virtue or under color of his office, and on demand fails to pay the same to the person entitled to require the payment thereof, the person thereby aggrieved may move for judgment in the superior court against such officer and his sureties for any sum demanded; and the court shall try the same and render judgment at the session when the motion shall be made, but 10 days' notice in writing of the motion must have been previously given. (1819, c. 1002, P. R.; R. C., c. 78, s. 5; 1869-70, c. 169, s. 14; 1876-7, c. 41, s. 2; Code, s. 1889; Rev., s. 283; C. S., s. 356; 1973, c. 108, s. 60.)

Editor's Note. — The 1973 amendment deleted "constable" following "coroner" and substituted "session" for "term" near the end of the section.

Remedy Cumulative. — It has never been understood that this cumulative and optional remedy obstructed the bringing of a regular action on the bond, when the injured party preferred to have recourse to it. Lackey v. Pearson, 101 N.C. 651, 8 S.E. 121 (1888).

Justice Has No Jurisdiction. — Since the repeal of § 13 of c. 80 of Battle's Revision it has been decided by repeated adjudications that a justice of the peace has no jurisdiction of an action on a constable's bond. Coggins v. Harrell, 86 N.C. 317 (1882).

To What Officers Applicable. — In Smith v. Moore, 79 N.C. 86 (1878), it was held that the power conferred by this section as it read in the Revised Code of 1856, was confined to the officers named therein, and that there was no way to hold a commissioner appointed to make a judicial sale liable for the proceeds thereof, except by an action instituted by the parties entitled to the money. Subsequent to this decision the words "or other public officer," have been inserted in the section; but applying the ejusdem generis rule it would seem that these words would not include a master in chancery and that the Smith case declares the law as it still stands. See, however, Ex parte Curtis, 82 N.C. 435 (1880), where the court states that a remedy against executrix and clerk and master should have been by summary motion under this section.

Actions by Persons Entitled to Money. — The section gives a summary remedy against public officers only to those entitled to the

money, so that a new clerk cannot proceed under it against a former clerk, for not paying office money over to him as his successor. O'Leary v. Harrison, 51 N.C. 338 (1859).

There is no provision in the statute giving a preference to the party or parties who first seek such summary remedy. And, withal, before any claim, preferential or otherwise, can be established under this statute, notice must be given, the court must try the cause, and judgment must be obtained. Western Carolina Power Co. v. Yount, 208 N.C. 182, 179 S.E. 804 (1935).

It was never intended that the mere lodging of a motion under this section established a preference, or right to establish a preference, over other creditors when such other creditors had been guilty of no laches in asserting their claims. Western Carolina Power Co. v. Yount, 208 N.C. 182, 179 S.E. 804 (1935).

Minor Interested in Fund Must Be Represented by Guardian Ad Litem. — Where a judgment for personal injuries in an action prosecuted by the father as next friend for his minor son is paid only in part, it is error for the court on the father's motion under this section to order the clerk to pay the father out of the recovery the entire amount expended by the father for necessary medical treatment of the minor, when the minor is not represented by a disinterested guardian ad litem, since the interests of the father and the minor in the fund are antagonistic. White v. Osborne, 251 N.C. 56, 110 S.E.2d 449 (1959).

Proceedings May Be Consolidated with General Creditor's Suit. — Plaintiff instituted summary proceedings under this section against the clerk of the superior court and the surety on his bond to recover for the clerk's default in failing to return to plaintiff, as ordered by the superior court, moneys deposited with the clerk. Notice and complaint in the proceeding were served on defendants. Thereafter another creditor of the clerk instituted suit in her own behalf and in behalf of all persons similarly situated, and decree was entered appointing a permanent receiver for the clerk, authorizing the receiver to bring suit on the clerk's bonds, and enjoining all creditors of the clerk from instituting any other suit or action against him or on his bonds. In the summary proceeding under this section, the surety on the clerk's bond pleaded the decree affirming receiver in bar to plaintiff's right to judgment, and the trial court dismissed the summary proceeding. It was held that the summary proceeding should have been consolidated with the suit in the nature of a general creditor's bill. Western Carolina Power Co. v. Yount, 205 N.C. 321, 171 S.E. 321 (1933).

Demand Not Necessary. — In a proceeding by the State, against a clerk of the superior court and the surety on his bond to recover sums embezzled by the clerk, the plaintiffs have the right to pursue the summary remedy under this section, upon their motion after due notice, and demand upon the clerk is not necessary. State v. Gant, 201 N.C. 211, 159 S.E. 427 (1931).

Waiver by Appearance. — Where a summary proceeding under this section has been instituted against a clerk of the superior court and the surety on his bonds to recover sums embezzled by the clerk, and the surety has entered a general appearance and filed answer, etc., the surety has waived its rights, if any it had, under §§ 109-33 through 109-35, to object that the plaintiffs could not maintain a summary proceeding under this section. State v. Gant, 201 N.C. 211, 159 S.E. 427 (1931).

Judgment. — Under this practice, judgment was entered for the amount of the bond, the execution to be satisfied on payment of the sum collected and costs. Fell v. Porter, 69 N.C. 140 (1873). From the language of the opinion in this case, it would seem that at the time of decision the operation of this section had been suspended. — Ed. note.

Where A. obtained a judgment against B., clerk of the superior court, for a sum of money in his hands by virtue of his office, and B. died, and his administrator, upon demand, failed to pay the money, it was held that the court below erred in overruling a motion by the plaintiff for a judgment upon the official bond of the clerk under the provisions of this section. Cooper v. Williams, 75 N.C. 94 (1876).

Notice. — As this section read in Battle's Revision the proceedings were "without other notice than is given by the delinquency of the officer." See Prairie v. Jenkins, 75 N.C. 545 (1876).

Applied in State v. Sawyer, 223 N.C. 102, 25 S.E.2d 443 (1943).

§ 109-37. Officer unlawfully detaining money liable for damages. — When money received as aforesaid is unlawfully detained by any of said officers, and the same is sued for in any mode whatever, the plaintiff is entitled to recover, besides the sum detained, damages at the rate of twelve per centum (12%) per annum from the time of detention until payment. (1819, c. 1002, s. 2, P. R.; R. C., c. 78, s. 9; 1868-9, c. 169; Code, s. 1890; Rev., s. 284; C. S., s. 357.)

This section must be considered in connection with § 109-36. Pasquotank County v. Hood, 209 N.C. 552, 184 S.E. 5 (1936).

And § 109-34. — This section and § 109-34 relate to the same subject matter and are a part of one and the same statute. They must be con-

strued together. State ex rel. Underwood v. Watson, 223 N.C. 437, 27 S.E.2d 144 (1943).

This Section and § 109-36 Are Not Applicable to Liquidation of Banks by Commissioner of Banks. — This section and § 109-36 are inapplicable to impose liability for damages in a case where the Commissioner of Banks took over the affairs of a bank which had been theretofore constituted the financial agent of the county and which had county funds on deposit and in its possession. Pasquotank County v. Hood, 209 N.C. 552, 184 S.E. 5 (1936).

The Commissioner of Banks holding a portion of the fund, subject to the orders of the court and for the purpose of liquidation, could not be said to constitute an "unlawful detention," nor should he in his representative capacity be liable in damages as a penalty for so doing. The punishment would not fall upon a defaulting or delinquent public officer, as intended by the statute, but would penalize funds held in trust for all the creditors and stockholders whose stock assessments have helped to contribute. Pasquotank County v. Hood, 209 N.C. 552, 184 S.E. 5 (1936).

Default of Officer Must Be Shown. — In an action to recover the 12% allowed under this section, it is necessary that the plaintiff show some adequate default. Hannah v. Hyatt, 170 N.C. 634, 87 S.E. 517 (1916).

Liability of Surety. — While, as against the principal on the bond of a clerk of the superior court, interest under the statute at the rate of 12% is collectible from the time of defalcation, the amount of the penalty on his bond determines the liability of the surety thereon. State ex rel. Lee v. Martin, 188 N.C. 119, 123 S.E. 631 (1924).

Effect of Waiver of Interest from Date of Defalcation. — Where, in an action against a clerk of the superior court and his surety to recover sums embezzled by the clerk, the State waives the interest from the date of the actual defalcations, but does demand the 12% from the date of the expiration of each term of office; a judgment awarding damages at 12%, under the provisions of this section, on the sums defaulted from the expiration of each term is not error, the amount being within the penalty of the bond. State v. Gant, 201 N.C. 211, 159 S.E. 427 (1931).

Interest by Way of Damages. — Whether or not the clerk is entitled to the benefits of this section, in a suit against his predecessor, is not now decided; but, granting that he is not so entitled, the law allows interest by way of damages on money wrongfully detained. State ex rel. Underwood v. Watson, 223 N.C. 437, 27 S.E.2d 144 (1943); State ex rel. Underwood v. Watson, 224 N.C. 502, 31 S.E.2d 465 (1944).

Applied in Windley v. Lupton, 212 N.C. 167, 193 S.E. 213 (1937).

Cited in Wood v. Citizens Bank, 199 N.C. 371, 154 S.E. 623 (1930).

§ 109-38. Evidence against principal admissible against sureties. — In actions brought upon the official bonds of clerks of courts, sheriffs, coroners, or other public officers, and also upon the bonds of executors, administrators, collectors or guardians, when it may be necessary for the plaintiff to prove any default of the principal obligors, any receipt or acknowledgment of such obligors, or any other matter or thing which by law would be admissible and competent for or toward proving the same as against him, shall in like manner be admissible and competent as presumptive evidence only against all or any of his sureties who may be defendants with or without him in said actions. (1844, c. 38; R. C., c. 44, s. 10; 1881, c. 8; Code, s. 1345; Rev., s. 285; C. S., s. 358; 1973, c. 108, s. 61.)

Editor's Note. — The 1973 amendment deleted "constables" following "coroners" near the beginning of the section.

Judgments as Evidence — Generally. — In action against an officer and one of the sureties on his official bond, the record of a judgment against the officer, and others of his sureties, in a previous action against them for the same demand, and on the same bond, but in which action the surety in the present action was not a party, is competent evidence to fix the amount due by the officer. Morgan v. Smith, 95 N.C. 396 (1886).

The question how far a judgment or decree is conclusive against a surety of a defendant, or against one who is liable over to a defendant, and who was not a party to the action, is involved in the greatest confusion. Between the intimate relations which exist between such a person and the defendant in the suit, on the one side, and the fundamental principle that no one ought to be bound by proceedings to which he was a stranger, on the other, the court has found it difficult to steer. Dixie Fire Ins. Co. v. American Bonding Co., 162 N.C. 384, 78 S.E. 430 (1913).

The cases are numerous in which it has been decided that a judgment rendered against a guardian is not, unaided by the statute, admissible as evidence against the surety to his bond. McKellar v. Powell, 11 N.C. 34 (1825).

The same rulings have been made in regard to the sureties to an administration bond.

Chairman of Mecklenburg v. Clark, 11 N.C. 43 (1825); Vanhook v. Barnett, 15 N.C. 268 (1833); The Governor v. Montford, 23 N.C. 155 (1840); The Governor v. Carter, 25 N.C. 338 (1843). So in reference to the liability of his surety to an amercement against the sheriff.

The act of 1844 (this section), however, changed the rule of law, and rendered competent against the sureties to official bonds, and those given by executors, administrators and guardians, whatever evidence would be competent against the principals, and this was declared to be conclusive, where the evidence was a judgment against him, in Brown v. Pike, 74 N.C. 531 (1876); and in Badger v. Daniel, 79 N.C. 386 (1878).

The act of 1881 amended the previous enactment by making the evidence "presumptive only" against the sureties. Moore v. Alexander, 96 N.C. 34, 1 S.E. 536 (1887).

"It seems that our predecessors in office upon this Bench have intimated, and in one case held, that such judgments, unaided by the statute, are inadmissible in evidence against the surety. Moore v. Alexander, 96 N.C. 34, 1 S.E. 536 (1887). But an examination of the question has convinced us that the decided trend of modern authority is to the effect that such a judgment against the principal prima facie only establishes the sum or amount of the liability against the sureties, although not parties to the action, but the sureties may impeach the judgment for fraud, collusion, or mistake, as well as set up an independent defense." Dixie Fire Ins. Co. v. American Bonding Co., 162 N.C. 384, 78 S.E. 430 (1913).

While this section fixed the rule as to actions brought upon the official bonds of clerks of courts, sheriffs, coroners, or other public officers, and also upon the bonds of executors, administrators, collectors, or guardians, the precedents were in hopeless discord as to bonds not covered by the statute, until Associate Justice Brown laid down the rule in Dixie Fire Ins. Co. v. American Bonding Co., 162 N.C. 384, 78 S.E. 430 (1913). "But an examination of the question has convinced us that the decided trend of modern authority is to the effect that such a judgment against the principal prima facie only establishes the sum or amount of the liability against the sureties, although not parties to the action, but the sureties may impeach the judgment for fraud, collusion, or mistake, as well as set up an independent defense." Charleston & W.C. Ry. v. Robert G. Lassiter & Co., 208 N.C. 209, 179 S.E. 789 (1935).

Same — Evidence of Assets as Well as Debts. — See Armistead v. Harramond, 11 N.C. 339 (1826); Brown v. Pike, 74 N.C. 531 (1876); Badger v. Daniel, 79 N.C. 386 (1878); Morgan v. Smith, 95 N.C. 396 (1886).

Same — Section Not Applicable to Tort Action. — The rule that the judgment against the principal in an official or fiduciary bond is presumptive evidence against the sureties under this section does not apply where the action is not on the bond, but in tort. Martin v. Buffaloe, 128 N.C. 305, 38 S.E. 902 (1901).

Same — Judgment Based on Admissions of Principal's Administrator, Where Interests of Administrator and Surety Conflict. — A judgment upon the admissions in the answer of the administrator bank of a deceased county treasurer is not competent in an action by the county commissioners as evidence against the surety on the official bond of the deceased when the bank has been made a party defendant and the surety at once raises the issue as to whether a part of the defalcation was moneys defaulted from the bank when the deceased was acting as its assistant cashier, the interest of the bank and the surety being in conflict, and this section not applying in such cases. Commissioners of Chowan County v. Citizens Bank, 197 N.C. 410, 149 S.E. 380 (1929).

For case recognizing the principle adopted in Commissioners of Chowan County v. Citizens Bank, 197 N.C. 410, 149 S.E. 380 (1929), but holding the rule inapplicable under peculiar facts of case, see Charleston & W.C. Ry. v. Robert G. Lassiter & Co., 208 N.C. 209, 179 S.E. 879 (1935).

Annual account of guardian is competent evidence against him, and presumptive evidence against his sureties. Loftin v. Cobb, 126 N.C. 58, 35 S.E. 230 (1900).

Joinder of Administrator and Sureties. — Under this section the sureties on an administrator's bond are properly joined with the administrator, where it is shown that the administrator received a benefit from a falsified final account by reason of which the plaintiff's judgment against the administrators remained unpaid. State ex rel. Salisbury Morris Plan Co. v. McCanless, 193 N.C. 200, 136 S.E. 371 (1927).

Cited in Pullen v. Heron Mining Co., 71 N.C. 563 (1874); Gurganus v. McLawhorn, 212 N.C. 397, 193 S.E. 844 (1937).

§ 109-39. Officer liable for negligence in collecting debt. — When a claim is placed in the hands of any sheriff or coroner for collection, and he does not use due diligence in collecting the same, he shall be liable for the full amount of the claim notwithstanding the debtor may have been at all times and is then able to pay the amount thereof. (1844, c. 64; R. C., c. 78, s. 3; 1869-70, c. 169, s. 12; Code, s. 1888; Rev., s. 286; C. S., s. 359; 1973, c. 108, s. 62.)

Editor's Note. — The 1973 amendment substituted "or coroner" for "coroner or constable" near the beginning of the section.

Section Applicable to Claims, Not Executions. — This section applies only to claims placed in the hands of the sheriff or other officer for collection — such claims as are within the jurisdiction of a justice of the peace, and may be collected by judgment and process of execution granted by that magistrate. It does not apply to executions issuing from the superior or other courts of record. The reason for the distinction is clearly and certainly pointed out in McLaurin v. Buchanan, 60 N.C. 91 (1863). The statute, in effect, now is just as it was when that decision was made. Brunhild v. Potter, 107 N.C. 415, 12 S.E. 55 (1890).

What Constitutes Negligence. — The degree of diligence required is that which a prudent man would ordinarily exercise in the management of his own affairs. A constable is not bound to such strict accountability as when process is delivered to him as an officer. Morgan v. Horne, 44 N.C. 25 (1852); Lipscomb v. Cheek, 61 N.C. 332 (1867). Therefore, what constitutes negligence must depend upon the facts in each particular case; five months' delay was held negligence in Nixon v. Bagby, 52 N.C. 4 (1859).

Chapter 110.

Child Welfare.

Article 1.

Child Labor Regulations.

Sec.

110-1. Minimum age.
110-2. Hours of labor.
110-3. Lunch period.
110-4. Posting of hours.
110-5. Time records.
110-6. Hazardous occupations prohibited for minors under 16.
110-7. Hazardous occupations prohibited for minors under 18.
110-8. Employment of minors in street trades; sale or distribution of newspapers, etc.
110-9. Employment certificate required.
110-10. Officers authorized to issue certificates.
110-11. Refusal and revocation of employment certificate.
110-12. Method of issuing employment certificates.
110-13. Employment certificate as evidence.
110-14. Regular and vacation employment certificates.
110-15. Duties of employee in regard to employment certificate.
110-16. [Repealed.]
110-17. State supervision of the issuance of employment certificates.
110-18. Rules and regulations.
110-19. Inspection and prosecutions.
110-20. Penalties.

Article 1A.

Exhibition of Children.

110-20.1. Exhibition of certain children prohibited.

Article 2.

Juvenile Services.

110-21, 110-21.1. [Repealed.]
110-22. Probation conditions; revocation.
110-22.1. [Repealed.]
110-23. Duties and powers of juvenile probation officers.
110-23.1. Juvenile probation officers; nongovernmental employees.
110-24. Requirements for lawful juvenile detention.
110-25. [Repealed.]
110-25.1. [Transferred.]
110-26 to 110-38. [Repealed.]
110-39. [Transferred.]
110-40 to 110-44. [Repealed.]

Article 2A.

Parental Control of Children.

Sec.

110-44.1. Child under 18 subject to parents' control.
110-44.2. Exceptions.
110-44.3. No criminal liability created.
110-44.4. Enforcement.

Article 3.

Control over Child-Caring Facilities.

110-45. Institution has authority of parent or guardian.
110-46. Regulations of institution not abrogated.
110-47. Enticing a child from institution.
110-48. Violation a misdemeanor.
110-49. Permits and licenses must be had by institutions caring for children.

Article 4.

Placing or Adoption of Juvenile Delinquents or Dependents.

110-50. Consent required for bringing child into State for placement or adoption.
110-51. Bond required.
110-52. Consent required for removing child from State.
110-53, 110-54. [Repealed.]
110-55. Violation of Article a misdemeanor.
110-56. Definitions.
110-57. Application of Article.

Article 4A.

Interstate Compact on the Placement of Children.

110-57.1. Adoption of Compact.
110-57.2. Financial responsibility under Compact.
110-57.3. Agreements under Compact.
110-57.4. Visitation, inspection or supervision.
110-57.5. Compact to govern between party states.
110-57.6. Placement of delinquents.
110-57.7. Compact administrator.

Article 5.

Interstate Compact on Juveniles.

110-58. Execution of Compact.
110-59. Compact Administrator.
110-60. Supplementary agreements.
110-61. Discharging financial obligations imposed by Compact or agreement.
110-62. Enforcement of Compact.
110-63. Additional procedure for returning runaways not precluded.

Sec.
110-64. Proceedings for return of runaways under Article IV of Compact; "juvenile" construed.

Article 6.

Governor's Advocacy Council on Children and Youth.

110-65. Short title.
110-66. Legislative purpose and intent.
110-67 to 110-70. [Repealed.]
110-71. Powers and duties of Council.
110-72. [Repealed.]
110-73 to 110-84. [Reserved.]

Article 7.

Day-Care Facilities.

110-85. Legislative intent and purpose.
110-86. Definitions.
110-87. Child Day-Care Licensing Board.
110-88. Powers and duties of the Board.
110-89. Director.
110-90. Powers and duties of Director.
110-91. Mandatory standards for a license.
110-92. Duties of State and local agencies.
110-93. Licensing procedure.
110-94. Administrative appeal.
110-95. Appeal hearing.
110-96. Judicial review of administrative appeals.
110-97. Judicial review hearing.
110-98. Mandatory license.
110-99. Display of license.
110-100. Licenses are property of the State.
110-101. Registration.
110-102. Information for parents.
110-103. Penalty.
110-104 to 110-114. [Reserved.]

Article 8.

Child Abuse and Neglect.

110-115. Short title.
110-116. Legislative intent and purpose.
110-117. Definitions.
110-118. Reports of child abuse or neglect.
110-119. Duty of director of social services.
110-120. Immunity of persons reporting.
110-121. Waiver of privileges.
110-122. Central registry.

Article 1.

Child Labor Regulations.

§ 110-1. Minimum age. — No minor under 16 years of age shall be employed, permitted or allowed to work in, about, or in connection with any gainful occupation at any time: Provided, that minors between 14 and 16 years of age may be employed outside school hours and during school vacations, but not in a factory or in any occupation otherwise prohibited by law; and provided, that boys 12 years of age and over securing a certificate from the Department of Labor, may be employed outside school hours in the sale or distribution of newspapers, magazines or periodicals subject to the provisions of G.S. 110-8 relating to employment of minors in street trades and to such rules and regulations as may be provided under G.S. 95-11. Nothing in this Article shall be construed to apply to the employment of a minor engaged in domestic or farm work performed under the direction or authority of the minor's parent or guardian. (1937, c. 317, s. 1.)

Prior Law. — As to employment of children before the Child Labor Act of 1903, see Ward v. Allen, 126 N.C. 948, 36 S.E. 194 (1900); Fitzgerald v. Alma Furn. Co., 131 N.C. 636, 42 S.E. 946 (1902); Hendrix v. Cotton Mills, 138 N.C. 169, 50 S.E. 561 (1905).

As to employment since the act, see Rolin v. R.J. Reynolds Tobacco Co., 141 N.C. 300, 53 S.E. 891 (1906); Leathers v. Blackwell Durham Tobacco Co., 144 N.C. 330, 57 S.E. 11 (1907); Starnes v. Albion Mfg. Co., 147 N.C. 556, 61 S.E. 525 (1908); Pettit v. Atlantic Coast Line Ry., 156 N.C. 119, 72 S.E. 195 (1911); McGowan v. Ivanhoe Mfg. Co., 167 N.C. 192, 82 S.E. 1028 (1914); Evans v. Dare Lumber Co., 174 N.C. 31, 93 S.E. 430 (1917).

As to employment in messenger or delivery service, see Pettit v. Atlantic Coast Line Ry., 186 N.C. 9, 118 S.E. 840 (1923).

As to mere volunteer injured in performance of simple and ordinary task, see Reaves v. Catawba Mfg. & Elec. Power Co., 206 N.C. 523, 174 S.E. 413 (1934).

§ 110-2. Hours of labor. — No minor under 16 years of age shall be employed, permitted or allowed to work in, about or in connection with any gainful occupation more than six consecutive days in any one week, or more than

40 hours in any one week, or more than eight hours in any one day, nor shall any minor under 16 years of age be so employed, permitted or allowed to work before seven o'clock in the morning or after seven o'clock in the evening of any day, or after nine o'clock on days when schools are not in session. No minor over 16 years of age and under 18 years of age shall be employed, permitted or allowed to work in or about or in connection with any gainful occupation for more than six consecutive days in any one week, or more than 48 hours in any one week, or more than nine hours in any one day, nor shall any minor between 16 and 18 years of age be so employed, permitted or allowed to work before six o'clock in the morning or after 12 o'clock midnight of any day, except boys between the ages of 16 and 18 may be permitted to work until one o'clock in the morning as messengers where the offices of the company for which they work do not close before that hour: Provided, that boys 12 years of age and over, employed in the sale or distribution of newspapers, magazines or periodicals outside school hours shall be subject to the provisions of G.S. 110-8 relating to employment of minors in street trades, and to such rules and regulations as may be provided under G.S. 95-11: Provided further, that minors under 18 years of age may be employed in a concert or a theatrical performance, under such rules and regulations as the State Commissioner of Labor may prescribe, up to 12 o'clock midnight; and provided further, that telegraph messenger boys in towns where a full-time service is not maintained on Sundays may work seven days per week, but not for more than two hours on Sunday. The combined hours of work and hours in school of children under 16 employed outside school hours shall not exceed a total of eight per day. (1937, c. 317, s. 2; 1951, c. 1187, s. 1; 1967, cc. 173, 764; 1969, c. 962.)

Violation of Section as Proximate Cause of Injury. — In order to make an employer liable in damages for an injury sustained by an employee being required to work more than eight hours a day in violation of this section, it must be shown that the violation of the statute was a proximate cause of the injury complained of. Williamson v. Old Dominion Box Co., 205 N.C. 350, 171 S.E. 335 (1933).

§ 110-3. Lunch period. — No minor under 16 years of age shall be employed or permitted to work for more than five hours continuously without an interval of at least 30 minutes for a lunch period, and no period of less than 30 minutes shall be deemed to interrupt a continuous period of work. (1937, c. 317, s. 3.)

§ 110-4. Posting of hours. — Every employer shall post and keep conspicuously posted in the establishment wherein any minor under 18 is employed, permitted, or allowed to work, a printed abstract of this Article and a list of the occupations prohibited to such minors, to be furnished by the State Department of Labor. (1937, c. 317, s. 4.)

§ 110-5. Time records. — Every employer shall keep a time book and/or record, which shall state the name of each minor employed, and which shall indicate the number of hours worked by said minor on each day of the week, and the amount of wages paid during each pay period. Such time record shall be kept on file for at least one year after the entry of the record, and shall be open to the inspection of the State Department of Labor. (1937, c. 317, s. 5.)

§ 110-6. Hazardous occupations prohibited for minors under 16. — No minor under 16 years of age shall be employed, permitted or allowed to work on or in connection with power-driven machinery. No minor under 16 years of age shall be employed, permitted or allowed to work in or about or in connection with: construction work of any kind, shipbuilding, mines or quarries, stone cutting or polishing, the manufacture, transportation or use of explosives or highly inflammable substances, ore-reduction works, smelters, hot rolling mills,

furnaces, foundries, forging shops or any other place in which the heating, melting or heat treatment of metals is carried on; lumbering or logging operations, saw or planing mills, pulp or paper mills, or in operating or assisting in operating punch presses or stamping machines, if the clearance between the ram and the die or the stripper exceeds one-fourth inch; power-driven woodworking machinery, cutting machines having a guillotine action, openers, pickers, cards or lappers, power shears, machinery having a heavy rolling or crush-action, corrugating, crimping, or embossing machines, meat-grinding machines, dough brakes or mixing machines in bakeries or cracker-making machinery, grinding, abrasive, polishing or buffing machines: Provided, that apprentices operating under conditions of bona fide apprenticeship may grind their own tools; machinery used in the cold rolling of heavy metal stock, metal plate bending machines, power-driven metal planing machines, circular saws, power-driven laundry or dry-cleaning machinery, oiling, cleaning or wiping machinery or shafting or applying belts to pulleys; or in the operation or repair of elevators or other hoisting apparatus, or as drivers of trucks or other motor vehicles, or in the operation of any unguarded machinery. (1937, c. 317, s. 6.)

"In or about or in Connection with Quarry". — In Campbell Contracting Co. v. Maryland Cas. Co., 21 F.2d 909 (4th Cir. 1927), it is said: "We cannot agree with the contention that a boy operating a hoist, that by means of a cable, pulls cars loaded with stone out of a quarry 150 to 175 feet distant, and whose duty it was upon signal to have the whistle blown, warning of a blast, and whose further duty it was to warn passersby, was not working 'in or about or in connection with a quarry.' "

Quoted in Gastonia Personnel Corp. v. Rogers, 276 N.C. 279, 172 S.E.2d 19 (1970).

§ 110-7. Hazardous occupations prohibited for minors under 18. — No minor under the age of 18 years shall be employed, permitted, or allowed to work at any processes where quartz or any other form of silicon dioxide or an asbestos silicate is present in powered form, or at work involving exposure to lead or any of its compounds in any form, or at work involving exposure to benzol or any benzol compound which is volatile or which can penetrate the skin, or at work in spray painting, or in the handling of unsterilized hides or animal or human hair. Nor shall any minor under 18 be employed or permitted to work in, about or in connection with any establishment where alcoholic liquors are distilled, rectified, compounded, brewed, manufactured, bottled, sold, or dispensed, or in a pool or billiard room: Provided, however, that this section shall not prohibit a minor under the age of 18 years from working in any establishment where beer is sold and not consumed on the premises, and to which has been issued only an "off premises" license for the sale of beer. Nor shall any girl under the age of 18 years be employed, permitted or allowed to work as a messenger in the distribution or delivery of goods or messages for any person, firm or corporation engaged in the business of transmitting or delivering goods or messages. Nor shall any minor under 18 years of age be employed, permitted, or allowed to work in any place of employment, or at any occupation hazardous or injurious to the life, health, safety or welfare of such minor. It shall be the duty of the State Department of Labor and the said State Department of Labor shall have power, jurisdiction, and authority, after due notice and after hearings duly held, to issue general or special orders, which shall have the force of law, prohibiting the employment of such minors in any place of employment or at any occupation hazardous or injurious to the life, health, safety or welfare of such minors. Nothing contained in this Chapter shall be construed to prohibit a minor who is 16 years of age or older from working in a restaurant that has a grade-A rating solely because said establishment has a malt-beverage, wine, spirituous-liquor or other permit issued by the State A.B.C. Board; but a minor

as described herein shall not be allowed to serve or dispense malt beverages, wine, or spirituous liquor. (1937, c. 317, s. 7; 1943, c. 670; 1973, c. 758, s. 1.)

Editor's Note. — The 1973 amendment added the last sentence.

Applicable to Establishment with a License under § 18A-31. — See opinion of Attorney General to Mr. W.C. Creel, Commissioner of Labor, 42 N.C.A.G. 220 (1973).

Quoted in Gastonia Personnel Corp. v. Rogers, 276 N.C. 279, 172 S.E.2d 19 (1970).

Stated in Underwood v. State Bd. of Alcoholic Control, 278 N.C. 623, 181 S.E.2d 1 (1971).

§ 110-8. Employment of minors in street trades; sale or distribution of newspapers, etc. — No boy under 14 years of age and no girl under 18 years of age shall distribute, sell, expose or offer for sale newspapers, magazines, periodicals, candies, drinks, peanuts, or other merchandise in any street or public place, or exercise the trade of bootblack in any street or public place. No boy under 16 years of age shall be employed or permitted or allowed to work at any of the trades or occupations mentioned in this section after 7:00 P.M. or before 6:00 A.M., or unless he has an employment certificate issued in accordance with G.S. 110-9. The State Commissioner of Labor shall have authority to make, promulgate and enforce such rules and regulations as he may deem necessary for the enforcement of this section, not inconsistent with this Article or existing law.

Nothing in this section shall be construed to prevent male persons over 14 years of age from distributing newspapers, magazines and periodicals on fixed routes, seven days per week: Provided, that such persons shall not be employed nor allowed to work after eight o'clock P.M. and before five o'clock A.M., and that the hours of work and the hours in school do not exceed eight in any one day, except boys 12 years of age and over who have secured a certificate from the Department of Labor for the sale or distribution of newspapers, magazines or periodicals: Provided further, that such person shall not be permitted or allowed to work more than four hours per day nor more than 24 hours per week: Provided further, that nothing in this Article shall be construed to prevent boys 12 years of age and over, upon securing a proper certificate from the Department of Labor, from being employed outside school hours in the sale or distribution of newspapers, magazines and periodicals (where not more than 75 customers are served in one day): Provided, that such boys shall not be employed between the hours of seven o'clock P.M. and six o'clock A.M., nor for more than 10 hours in any one week. (1937, c. 317, s. 8.)

§ 110-9. Employment certificate required. — Before any minor shall be employed, permitted or allowed to work in, about or in connection with any gainful occupation, such minor shall procure and keep in his possession at all times while pursuing such employment an employment certificate in his name and issued as hereinafter prescribed. In case of a minor engaged in street trade where the relationship of employer and employee does not exist between such minor and the supplier of the merchandise which the minor sells, the parent or guardian of such minor shall be deemed the employer of such minor and the minor shall be required to procure and keep in his possession at all times while pursuing this employment the employment certificate herein required. (1937, c. 317, s. 9; 1973, c. 649, s. 1.)

Cross Reference. — See Editor's note to § 110-12.

Editor's Note. — The 1973 amendment rewrote this section so as to require the minor to procure the certificate and keep it in his possession, rather than requiring the employer to procure the certificate and keep it on file.

Newsboy Not Employee. — A newsboy engaged in selling papers is not an employee of the newspaper within the meaning of that term as used in the Workmen's Compensation Act, the

newsboy not being on the newspaper's payroll and being without authority to solicit subscriptions and being free to select his own methods of effecting sales, although some degree of supervision was exercised by the newspaper. Creswell v. Charlotte News Publishing Co., 204 N.C. 380, 168 S.E. 408 (1933).

§ 110-10. Officers authorized to issue certificates. — The employment certificate required by this Article shall be issued only by county or city directors of social services in such form and under such conditions as may be prescribed by the State Department of Labor. (1937, c. 317, s. 10; 1961, c. 186; 1969, c. 982.)

§ 110-11. Refusal and revocation of employment certificate. — The person designated to issue employment certificates may refuse to grant such certificate, or may revoke such certificate after issuance if, in his judgment, the best interests of the minor would be served by such refusal or revocation. Employer, parent or guardian of the minor whose employment certificate has been refused or revoked may appeal to the Commissioner of Labor. (1937, c. 317, s. 11.)

§ 110-12. Method of issuing employment certificates. — The person designated to issue employment certificates shall issue such certificates only upon the application in person of the minor desiring employment, and after having approved and filed the following papers:

(1) A promise of employment signed by the prospective employer or by someone duly authorized by him, setting forth the specific nature of the occupation in which he intends to employ such minor, and the number of hours per day and days per week which said minor shall be employed.

(2) Evidence of age showing that minor is of the age required by this Article, which evidence shall consist of one of the following proofs of age and shall be required in the order herein designated, as follows:

a. A duly attested transcript of the birth certificate filed according to law with a registrar of vital statistics, or other officer charged with the duty of recording births; or

b. A baptismal certificate or transcript of the record of baptism, duly certified, and showing the date and place of birth; or

c. Other documentary record of age (other than a school record or an affidavit of age) such as a Bible record, passport or transcript thereof, duly certified, or life insurance policy which shall appear to the satisfaction of the issuing officer to be good and sufficient evidence of age; or

d. Repealed by Session Laws 1971, c. 370.

(3) Repealed by Session Laws 1971, c. 368.

(4) A school record signed by the principal of the school which the minor has last attended or by someone duly authorized by him, giving the full name, date of birth, grade last completed, and residence of the minor.

The employment certificate shall be delivered to the minor for whom it is issued and this certificate shall be valid for the employment described in the promise of employment submitted in accordance with subdivision (1) of this section and for any subsequent employment of the minor. Provided: That the provisions of this act shall not apply to the hazardous occupations prohibited for minors in G.S. 110-6 and 110-7, and the provisions of this act shall not apply to the hazardous occupations as set forth in Child Labor Bulletin No. 101, promulgated under the United States Department of Labor's Bureau of Labor Standards as authorized by Chapter 8 of Title 29 of the United States Code, known as the "Fair Labor Standards Act," as amended. (1937, c. 317, s. 12; 1971, cc. 368, 370; 1973, c. 649, s. 2.)

Editor's Note. — The 1973 amendment rewrote the first sentence of the last paragraph, which formerly provided that the certificate should be delivered to the prospective employer and should be valid only for the employer named therein and for the occupation designated in the promise of employment, and added the proviso to the last paragraph.

The words "this act" in the proviso to the last paragraph would seem to refer to the 1973 amendatory act, which also amended §§ 110-9, 110-15 and 110-19.

Prior Law. — For decisions under former law, see Rolin v. R.J. Reynolds Tobacco Co., 141 N.C. 300, 53 S.E. 891 (1906); Williamson v. Old Dominion Box Co., 205 N.C. 350, 171 S.E. 335 (1933).

§ 110-13. Employment certificate as evidence. — Said employment certificate duly issued shall be conclusive evidence of the age of the minor for whom issued in any proceeding involving the employment of the minor under the child labor or workmen's compensation law or any other labor law of the State, as to any act occurring subsequent to its issuance. (1937, c. 317, s. 13.)

§ 110-14. Regular and vacation employment certificates. — Employment certificates shall be of two kinds, regular certificates permitting employment during school hours, and vacation certificates, permitting employment during the school vacation and during the school term at such time as the public schools are not in session. (1937, c. 317, s. 14.)

§ 110-15. Duties of employee in regard to employment certificate. — Every employee receiving an employment certificate shall, after accepting employment and on the first day of employment, surrender his employment certificate to his employer for the duration of his employment, for the purpose of making the employment certificate readily accessible to any certificate-issuing officer, attendance officer, inspector, or other person authorized to enforce this Article. Upon termination of employment, the employer shall immediately return the employment certificate to the minor. (1937, c. 317, s. 15; 1973, c. 649, s. 3.)

Cross Reference. — See Editor's note to § 110-12.

Editor's Note. — The 1973 amendment rewrote this section.

§ 110-16: Repealed by Session Laws 1971, c. 1231, s. 2.

§ 110-17. State supervision of the issuance of employment certificates. — The State Department of Labor shall prescribe such rules and regulations for the issuance of employment certificates and age certificates as will promote uniformity and efficiency in the administration of this Article. It also shall supply to local issuing officers all blank forms to be used in connection with the issuance of such certificates. Duplicates of each employment or age certificate shall be mailed by the issuing officer to the State Department of Labor within one week after issuance. The State Department of Labor may revoke any such certificate if in its judgment it was improperly issued or if the minor is illegally employed. If the certificate be revoked, the issuing officer and the employer shall be notified of such action in writing, and such minor shall not thereafter be employed or permitted to work until a new certificate has been legally obtained. (1937, c. 317, s. 17.)

§ 110-18. Rules and regulations. — The Commissioner of Labor of North Carolina shall have the power to make such rules and regulations for enforcing and carrying out the provisions of this Article as may be deemed necessary by said Commissioner. (1937, c. 317, s. 18.)

§ 110-19. Inspection and prosecutions. — It shall be the duty of the State Department of Labor and of the inspectors and agents of said State Department of Labor to enforce the provisions of this Article, to make complaints against persons violating its provisions, and to prosecute violations of the same. The said

State Department of Labor, its inspectors and agents shall have authority to enter and inspect at any time any place or establishment covered by the Article, and to have access to employment certificates kept in the possession of the employee and such other records as may aid in the enforcement of this Article. School attendance officers are likewise empowered to visit and inspect places where minors may be employed. (1937, c. 317, s. 19; 1971, c. 1231, s. 2; 1973, c. 649, s. 4.)

Cross Reference. — See Editor's note to § 110-12.

Editor's Note. — The 1973 amendment substituted "in the possession of the employee" for "on file by the employer" in the second sentence.

§ 110-20. Penalties. — Whoever employs or permits or allows any minor to be employed or to work in violation of this Article, or of any order or ruling issued under the provisions of this Article, or obstructs the State Department of Labor, its officers or agents, or any other persons authorized to inspect places of employment under this Article, and whoever having under his control or custody any minor, permits or allows him to be employed or to work in violation of this Article, shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than five dollars ($5.00) nor more than fifty dollars ($50.00), or imprisonment for not more than 30 days, or both such fine and imprisonment. Each day during which any violation of this Article continues after notice from the State Department of Labor to the proprietor, manager, or other officer of the partnership, firm or corporation, shall constitute a separate and distinct offense, and the employment of any minor in violation of the Article shall, with respect to each minor so employed, constitute a separate and distinct offense. The penalties specified in this Article may be recovered by the State in an action for debt brought before any court of competent jurisdiction, or through criminal proceedings, as may be deemed proper. (1937, c. 317, s. 20.)

Cited in Swaney v. Peden Steel Co., 259 N.C. 531, 131 S.E.2d 601 (1963).

ARTICLE 1A.

Exhibition of Children.

§ 110-20.1. Exhibition of certain children prohibited. — (a) Except to the extent otherwise provided in subsection (d) of this section, it is unlawful to exhibit publicly for any purpose, or to exhibit privately for the purpose of entertainment, or solely or primarily for the satisfaction of the curiosity of any observer, any child under the age of 18 years who is mentally ill or mentally retarded or who presents the appearance of having any deformity or unnatural physical formation or development, whether or not the exhibiting of the child is in return for a monetary or other consideration.

(b) It is unlawful to employ, use, have custody of, or in any way be associated with any child described in subsection (a) for the purpose of an exhibition forbidden therein, or for one who has the care, custody or control of the child as a parent, relative, guardian, employer or otherwise, to neglect or refuse to restrain the child from participating in the exhibition.

(c) It is unlawful to procure or arrange for, or participate in procuring or arranging for, anything made unlawful by subsections (a) and (b).

(d) This section does not apply to the transmission of an image by television by a duly licensed television station, or to any exhibition by a federal, State, county or municipal government, or political subdivision or agency thereof, or

to any exhibition by any corporation, unincorporated association, or other organization organized and operated exclusively for religious, charitable, or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(e) Any violation of this Article shall be a misdemeanor which, upon conviction, shall be punished by a fine of not less than five dollars ($5.00) nor more than fifty dollars ($50.00) or imprisonment for not more than 30 days, or both such fine and imprisonment. Each day during which any violation of this Article continues after notice to the violator, from any county social services director, to cease and desist from any violation of this section shall constitute a separate and distinct offense. Any act or omission forbidden by this Article shall, with respect to each child described therein constitute a separate and distinct offense. (1969, c. 457, s. 1; c. 982.)

Editor's Note. — Pursuant to former § 108-1, "county social services director" has been substituted for "county welfare director" in the second sentence of subsection (e).

Television Coverage of Children in the Children's Unit of Charity Hospital Not Prohibited When Programs Are Prepared for Public or General Benefit or for Purposes of Treatment of Children. — See opinion of Attorney General to Mr. S.S. Haney, 41 N.C.A.G. 590 (1971).

ARTICLE 2.

Juvenile Services.

§ 110-21: Repealed by Session Laws 1973, c. 1339, s. 2.

Cross Reference. — For present provisions as to juvenile services, see §§ 7A-289.1 through 7A-289.7.

§ 110-21.1: Repealed by Session Laws 1969, c. 911, s. 1.

§ 110-22. Probation conditions; revocation. — When the court places any child on probation, the court order shall specify the conditions of probation and the period of time the child shall remain on probation. The conditions of probation shall be designed by the court to meet the needs of the child and may include any of the following or such other conditions of probation as the court may order in the best interest of the child:

(1) That the child shall remain on good behavior and not violate any laws;
(2) That the child attend school regularly;
(3) That the child not associate with specified persons or be in specified places;
(4) That the child report to the probation officer as often as required by the probation officer;
(5) That the child make specified financial restitution or pay a fine;
(6) That the child be employed regularly if not attending school.

The court may review the progress of any child on probation at any time during the period of probation. The conditions of probation or the period of time on probation may be modified as may be appropriate in a particular case, provided there is notice and a hearing as provided by Article 23 of Chapter 7A. If a child violates the conditions of his probation, such child, after notice, may be required to appear before the court, and the court may make any disposition of the matter authorized by G.S. 7A-286. At the end of a child's period of probation, the child shall appear after notice of a hearing with the juvenile probation officer so that the court may evaluate the child's need for continued supervision, and the judge may terminate the probation, continue the child on

probation under the same or modified conditions for a specified term, or enter such other order as the court may find to be in the best interest of the child. (1919, c. 97, s. 12; C. S., s. 5050; 1969, c. 911, s. 1; 1971, c. 1180, s. 6.)

§ 110-22.1: Repealed by Session Laws 1969, c. 911, s. 1.

§ 110-23. Duties and powers of juvenile probation officers. — All juvenile probation officers or family counselors providing services to judges hearing juvenile cases shall have the following powers and duties, as the court may require:

(1) To secure or arrange for such information concerning a case as the court may require before, during or after the hearing;
(2) To prepare written reports for the use of the court;
(3) To appear and testify at court hearings;
(4) To assume temporary custody of a child when so directed by court order;
(5) To furnish each child on probation and his parents with a written statement of his conditions of probation, and to consult with the parents, guardian or custodian so that they may help the child comply with his probation;
(6) To keep informed concerning the conduct and progress of any child on probation or under court supervision through home visits or conferences with the parents, guardian or custodian, and in other ways;
(7) To see that the conditions of probation are complied with by the child, or to bring any child who violates his probation to the attention of the court;
(8) To make periodic reports to the court concerning the adjustment of any child on probation or under court supervision;
(9) To keep such records of his work as the court may require;
(10) To account for all funds collected from children;
(11) To have all the powers of a peace officer in the district;
(12) To provide supervision for a child transferred to his supervision from another court or another state, and to provide supervision for any child released from an institution operated by the Department of Correction when requested by such Department to do so;
(13) To have such other duties as the judge may direct. (1919, c. 97, s. 13; C. S., s. 5051; 1957, c. 100, s. 1; 1969, c. 911, s. 1; 1973, c. 1262, s. 10.)

Editor's Note. — Pursuant to Session Laws 1973, c. 1262, s. 10, the editors have substituted "Department of Correction" and "Department" for "North Carolina Board of Juvenile Correction" and "Board" in subdivision (12), although the 1973 act did not make any express reference to the former State Board of Juvenile Correction, which had been superseded by the Board of Youth Development.

§ 110-23.1. Juvenile probation officers; nongovernmental employees. — Whenever funds are made available for the purposes of this section, the chief district court judge of any district where family counselor services are not available may, in accordance with rules of the administrative offices of the courts, designate persons other than government employees to act as juvenile probation officers and chief juvenile probation officers, and such persons so designated shall have the same powers, duties, and responsibilities as juvenile probation officers and chief juvenile probation officers otherwise provided for by law. (1971, c. 1134.)

§ 110-24. Requirements for lawful juvenile detention. — It shall be unlawful for any child coming within the provisions of Article 23 of Chapter 7A to be placed in any jail, prison or other penal institution where such child will come into contact with adults charged with or convicted of crimes, except that

a court may detain a child in a jail with a holdover facility for juveniles approved by the Department of Human Resources as meeting the State standards as provided by Part 3, Article 3, Chapter 108 and Article 10, Chapter 153A.

Children who are alleged or adjudicated to be delinquent or undisciplined as defined by Article 23, Chapter 7A, and who require secure custody for the protection of the community or in the best interest of the child may be temporarily detained in a county detention home or a regional detention home as defined by G.S. 134-36 which shall be separate from any jail, lockup, prison, or other adult penal institution. It shall be unlawful for a county or any unit of government to operate a juvenile detention home unless the facility meets the State standards of the Department of Human Resources.

A juvenile detention facility shall be located in a building designed to provide secure custody which meets State standards and shall have such personnel as may be necessary to provide for the supervision and safety of the children being detained. A juvenile detention home shall provide a program for children detained therein which meets the standards of the Department of Human Resources, and such program shall be designed to provide wholesome activities in the best interest of the children placed therein. (1919, c. 97, s. 10; C. S., s. 5048; 1957, c. 100, s. 1; 1967, c. 1207; 1969, c. 911, s. 1; 1973, c. 476, s. 138; c. 1230, s. 3.)

Editor's Note. — The first 1973 amendment substituted "Social Services Commission" for "State Board of Social Services" and "Department of Human Resources" for "State Department of Social Services."

The second 1973 amendment, effective July 1, 1975, rewrote this section.

Opinions of Attorney General. — The Honorable Gilbert H. Burnett, District Court Judge, Fifth Judicial District, 40 N.C.A.G. 670 (1969).

§ 110-25: Repealed by Session Laws 1969, c. 911, s. 1.

§ 110-25.1: Transferred to § 130-58.1 by Session Laws 1969, c. 911, s. 3.

§§ 110-26 to 110-38: Repealed by Session Laws 1969, c. 911, s. 1.

§ 110-39: Transferred to § 14-316.1 by Session Laws 1969, c. 911, s. 4.

§§ 110-40 to 110-44: Repealed by Session Laws 1969, c. 911, s. 1.

ARTICLE 2A.

Parental Control of Children.

§ 110-44.1. Child under 18 subject to parents' control. — Notwithstanding any other provision of law, any child under 18 years of age, except as provided in G.S. 110-44.2 and 110-44.3, shall be subject to the supervision and control of his parents. (1969, c. 1080, s. 1.)

Applied in Baker v. Baker, 368 F. Supp. 651 (E.D.N.C. 1973).

Cited in Wheeler v. Goodman, 330 F. Supp. 1356 (W.D.N.C. 1971).

§ 110-44.2. Exceptions. — This Article shall not apply to any child under the age of 18 who is married or who is serving in the armed forces of the United States, or who has been emancipated. (1969, c. 1080, s. 2.)

§ 110-44.3. No criminal liability created. — This Article shall not be interpreted to place any criminal liability on a parent for any act of his child 16 years of age or older. (1969, c. 1080, s. 3.)

§ 110-44.4. Enforcement. — The provisions of this Article may be enforced by the parent, guardian, or person standing in loco parentis to the child by filing a civil action in the district court of the county where the child can be found. Upon the institution of such action by a verified complaint, alleging that the defendant child has left home or has left the place where he has been residing and refuses to return and comply with the direction and control of the plaintiff, the court may issue an order directing the child personally to appear before the court at a specified time to be heard in answer to the allegations of the plaintiff and to comply with further orders of the court. Such orders shall be served by the sheriff upon the child and upon any other person named as a party defendant in such action. At the time of the issuance of the order directing the child to appear the court may in the same order, or by separate order, order the sheriff to enter any house, building, structure or conveyance for the purpose of searching for said child and serving said order and for the purpose of taking custody of the person of said child in order to bring said child before the court. Any order issued at said hearing shall be treated as a mandatory injunction and shall remain in full force and effect until the child reaches the age of 18, or until further orders of the court. Within 30 days after the hearing on the original order, the child, or anyone acting in his behalf, may file a verified answer to the complaint. Upon the filing of an answer by or on behalf of said child, any district court judge holding court in the county or judicial district where said action was instituted shall have jurisdiction to hear the matter, without a jury, and to make findings of fact, conclusions of law, and render judgment thereon. Any aggrieved party may within the time allowed for appeal of civil actions generally appeal to the superior court where trial shall be had without a jury. Appeals from the superior court to the Court of Appeals shall be allowed as in civil actions generally. The district judge issuing the original order or the district judge hearing the matter after answer has been filed shall also have authority to order that any person named defendant in the order or judgment shall not harbor, keep, or allow the defendant child to remain on said person's premises or in said person's home. Failure of any defendant to comply with the terms of said order or judgment shall be punishable as for contempt. (1969, c. 1080, s. 4.)

Cited in Wheeler v. Goodman, 330 F. Supp. 1356 (W.D.N.C. 1971).

ARTICLE 3.

Control over Child-Caring Facilities.

§ 110-45. Institution has authority of parent or guardian. — Every indigent child which may be placed in any orphanage, children's home, or child-placing institution in this State, which shall be an institution existing under and by virtue of the laws of this State, shall be under the control of the authorities of such institution so long as, under the rules and regulations of such institution, the child is entitled to remain in the same. The authority of the institution shall be the same as that of a parent or guardian before the child was placed in the institution; but such authority shall extend only to the person of the child. (1917, c. 133, s. 1; C. S., s. 5063.)

§ 110-46. Regulations of institution not abrogated. — Nothing in this Article shall be construed in any way to abrogate any of the rules and regulations of such institutions insofar as the rules and regulations have for their purpose the welfare and protection of the institutions. (1917, c. 133, s. 2; C. S., s. 5064.)

§ 110-47. Enticing a child from institution. — It is unlawful for any person to entice or attempt to entice, persuade, harbor, or conceal, or in any manner

induce any indigent child to leave any of the institutions hereinbefore mentioned without the knowledge or consent of the authorities of such institutions. But this Article shall not interfere with a mother's right to her child in case she becomes able to sustain her child; and the county commissioners in the county in which she resides shall in case of doubt have authority to recommend to the institution concerning the child. (1917, c. 133, s. 3; C. S., s. 5065.)

§ 110-48. Violation a misdemeanor. — Any person violating any of the provisions of G.S. 110-45, 110-46 and 110-47 shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned, or both, in the discretion of the court. (1917, c. 133, s. 4; C. S., s. 5066.)

§ 110-49. Permits and licenses must be had by institutions caring for children. — No individual, agency, voluntary association, or corporation seeking to establish and carry on any kind of business or organization in this State for the purpose of giving full-time care to children or for the purpose of placing dependent, neglected, abandoned, destitute, orphaned or delinquent children, or children separated temporarily from their parents, shall be permitted to organize and carry on such work without first having secured a written permit from the Department of Human Resources. The said Department shall issue such permit recommending said business or organization only after it has made due investigation of the purpose, character, nature, methods and assets of the proposed business or organization.

Upon establishment as provided above, every such organization, except those exempted in G.S. 108-78(c) shall annually procure a license from the Department of Human Resources, and it shall be unlawful to carry on said work or business without having such license.

Any individual, corporation, institution, or association violating any of the provisions of this section shall, upon conviction thereof, be guilty of a misdemeanor and punished by a fine of not more than two hundred dollars ($200.00) or by imprisonment of not more than six months, or by both such fine and imprisonment. (1919, c. 46; C. S., s. 5067; 1931, c. 226, s. 6; 1957, c. 100, s. 1; 1969, cc. 908, 982, 1081; 1973, c. 476, s. 138.)

Editor's Note. — The 1973 amendment substituted "Department of Human Resources" for "State Board of Social Services" and "said Department" for "said Board" in the first paragraph and "Department of Human Resources" for "State Board of Public Welfare" in the second paragraph.

Inapplicable to Organization Providing Residential Care to Girls between the Ages of 16 and 23. — See Opinion of Attorney General to Dr. Renee Westcott, Commissioner of Department of Social Services, 42 N.C.A.G. 226 (1973).

ARTICLE 4.

Placing or Adoption of Juvenile Delinquents or Dependents.

§ 110-50. Consent required for bringing child into State for placement or adoption. — (a) No person, agency, association, institution, or corporation shall bring or send into the State any child for the purpose of giving his custody to some person in the State or procuring his adoption by some person in the State without first obtaining the written consent of the Department of Human Resources.

(b) The person with whom a child is placed for either of the purposes set out in subsection (a) of this section shall be responsible for his proper care and training. The Department or its agents shall have the same right of visitation and supervision of the child and the home in which it is placed as in the case of a child placed by the Department or its agents as long as the child shall remain

within the State and until he shall have reached the age of 18 years or shall have been legally adopted. (1931, c. 226, s. 1; 1947, c. 609, s. 1; 1973, c. 476, s. 138.)

Editor's Note. — The 1973 amendment substituted "Department of Human Resources" for "State Board of Public Welfare" and "Department" for "Board."

§ 110-51. Bond required. — The Social Services Commission may, in its discretion, require of a person, agency, association, institution, or corporation which brings or sends a child into the State with the written consent of the Department of Human Resources, as provided by G.S. 110-50, a continuing bond in a penal sum not in excess of one thousand dollars ($1,000) with such conditions as may be prescribed and such sureties as may be approved by the Department of Human Resources. Said bond shall be made in favor of and filed with the Department of Human Resources with the premium prepaid by the said person, agency, association, institution or corporation desiring to place such child in the State. (1931, c. 226, s. 2; 1947, c. 609, s. 2; 1969, c. 982; 1973, c. 476, s. 138.)

Editor's Note. — The 1973 amendment substituted "Social Services Commission" for "State Board of Public Welfare" near the beginning of the first sentence and substituted "Department of Human Resources" for "Board" near the middle of the first sentence and for "State Board of Public Welfare" at the end of the first sentence and in the second sentence.

§ 110-52. Consent required for removing child from State. — No child shall be taken or sent out of the State for the purpose of placing him in a foster home or in a child-caring institution without first obtaining the written consent of the Department of Human Resources. The foster home or child-caring institution in which the child is placed shall report to the Department at such times as the Department may direct as to the location and well-being of such child until he shall have reached the age of 18 years or shall have been legally adopted. (1931, c. 226, s. 3; 1947, c. 609, s. 3; 1973, c. 476, s. 138.)

Editor's Note. — The 1973 amendment substituted "Department of Human Resources" for "State Board of Public Welfare" and "Department" for "Board."

Applied in In re Blalock, 233 N.C. 493, 64 S.E.2d 848, 25 A.L.R.2d 818 (1951).

§ 110-53: Repealed by Session Laws 1947, c. 609, s. 4.

§ 110-54: Repealed by Session Laws 1943, c. 753, s. 2.

§ 110-55. Violation of Article a misdemeanor. — Every person acting for himself or for an agency who violates any of the provisions of this Article or who shall intentionally make any false statements to the Social Services Commission or the Secretary of Human Resources or an employee thereof acting for the Department in an official capacity in the placing or adoption of juvenile delinquents or dependents shall, upon conviction thereof, be guilty of a misdemeanor and punished by a fine of not more than two hundred dollars ($200.00) or by imprisonment for not more than six months, or by both such fine and imprisonment. (1931, c. 226, s. 7; 1957, c. 100, s. 1; 1973, c. 476, s. 138.)

Editor's Note. — The 1973 amendment substituted "Social Services Commission or the Secretary of Human Resources or an employee thereof acting for the Department in an official capacity in the placing or adoption of juvenile delinquents or dependents" for "State Board of Public Welfare."

Quoted in part in In re Blalock, 233 N.C. 493, 64 S.E.2d 848, 25 A.L.R.2d 818 (1951).

§ 110-56. Definitions. — The term "Department" wherever used in this Article shall be construed to mean the Department of Human Resources. The terms "he" and "his" and "him" wherever used in this Article shall apply to a female as well as a male child. (1931, c. 226, s. 8; 1957, c. 100, s. 1; 1973, c. 476, s. 138.)

Editor's Note. — The 1973 amendment substituted "Department" for "Board" and "Department of Human Resources" for "State Board of Public Welfare."

Stated in In re Blalock, 233 N.C. 493, 64 S.E.2d 848, 25 A.L.R.2d 818 (1951).

§ 110-57. Application of Article. — None of the provisions of this Article shall apply when a child is brought into or sent into, or taken out of, or sent out of the State, by the guardian of the person of such child, or by a parent, stepparent, grandparent, uncle or aunt of such child, or by a brother, sister, half-brother, or half-sister of such child, if such brother, sister, half-brother, or half-sister is 18 years of age or older. (1947, c. 609, s. 5; 1971, c. 1231, s. 1.)

Editor's Note. — The 1971 amendment substituted "18" for "twenty-one."

ARTICLE 4A.

Interstate Compact on the Placement of Children.

§ 110-57.1. Adoption of Compact. — The Interstate Compact on the Placement of Children is hereby enacted into law and entered into with all other jurisdictions legally joining therein in form substantially as contained in this Article. It is the intent of the General Assembly that Article 4 shall govern interstate placements of children between North Carolina and any other jurisdictions not a party to this Compact.

Article I. Purpose and Policy.

It is the purpose and policy of the party states to cooperate with each other in the interstate placement of children to the end that:

(a) Each child requiring placement shall receive the maximum opportunity to be placed in a suitable environment and with persons or institutions having appropriate qualifications and facilities to provide a necessary and desirable degree and type of care.

(b) The appropriate authorities in a state where a child is to be placed may have full opportunity to ascertain the circumstances of the proposed placement, thereby promoting full compliance with applicable requirements for the protection of the child.

(c) The proper authorities of the state from which the placement is made may obtain the most complete information on the basis of which to evaluate a projected placement before it is made.

(d) Appropriate jurisdictional arrangements for the care of children will be promoted.

Article II. Definitions.

As used in this Compact:

(a) "Child" means a person who, by reason of minority, is legally subject to parental, guardianship or similar control.

(b) "Sending agency" means a party state officer or employee thereof; a subdivision of a party state, or officer or employee thereof; a court of a party state; a person, corporation, association, charitable agency or other entity which sends, brings, or causes to be sent or brought any child to another party state.

(c) "Receiving state" means the state to which a child is sent, brought, or caused to be sent or brought, whether by public authorities or private persons or agencies, and whether for placement with state or local public authorities of [or] for placement with private agencies or persons.

(d) "Placement" means the arrangement for the care of a child in a family free or boarding home or in a child-caring agency or institution but does not include any institution caring for the mentally ill, mentally defective or epileptic or any institution primarily educational in character, and any hospital or other medical facility.

(e) "Appropriate public authorities" as used in Article III shall, with reference to this State, mean the Department of Human Resources and said agency shall receive and act with reference to notices required by Article III.

(f) "Appropriate authority in the receiving state" as used in paragraph (a) of Article V shall, with reference to this State, mean the Secretary of Human Resources.

(g) "Executive head" as used in Article VII means the Governor.

Article III. Conditions for Placement.

(a) No sending agency shall send, bring, or cause to be sent or brought into any other party state any child for placement in foster care or as a preliminary to a possible adoption unless the sending agency shall comply with each and every requirement set forth in this Article and with the applicable laws of the receiving state governing the placement of children therein.

(b) Prior to sending, bringing or causing any child to be sent or brought into a receiving state for placement in foster care or as a preliminary to a possible adoption, the sending agency shall furnish the appropriate public authorities in the receiving state written notice of the intention to send, bring, or place the child in the receiving state. The notice shall contain:

(1) The name, date and place of birth of the child.

(2) The identity and address or addresses of the parents or legal guardian.

(3) The name and address of the person, agency or institution to or with which the sending agency proposes to send, bring, or place the child.

(4) A full statement of the reasons for such proposed action and evidence of the authority pursuant to which the placement is proposed to be made.

(c) Any public officer or agency in a receiving state which is in receipt of a notice pursuant to paragraph (b) of this Article may request of the sending agency, or any other appropriate officer or agency of or in the sending agency's state, and shall be entitled to receive therefrom, such supporting or additional information as it may deem necessary under the circumstances to carry out the purpose and policy of this Compact.

(d) The child shall not be sent, brought, or caused to be sent or brought into the receiving state until the appropriate public authorities in the receiving state shall notify the sending agency, in writing, to the effect that the proposed placement does not appear to be contrary to the interests of the child.

Article IV. Penalty for Illegal Placement.

The sending, bringing, or causing to be sent or brought into any receiving state of a child in violation of the terms of this Compact shall constitute a

violation of the laws respecting the placement of children of both the state in which the sending agency is located or from which it sends or brings the child and of the receiving state. Such violation may be punished or subjected to penalty in either jurisdiction in accordance with its laws. In addition to liability for any such punishment or penalty, any such violation shall constitute full and sufficient grounds for the suspension or revocation of any license, permit, or other legal authorization held by the sending agency which empowers or allows it to place, or care for children.

Article V. Retention of Jurisdiction.

(a) The sending agency shall retain jurisdiction over the child sufficient to determine all matters in relation to the custody, supervision, care, treatment and disposition of the child which it would have had if the child had remained in the sending agency's state, until the child is adopted, reaches majority, becomes self-supporting or is discharged with the concurrence of the appropriate authority in the receiving state. Such jurisdiction shall also include the power to effect or cause the return of the child or its transfer to another location and custody pursuant to law. The sending agency shall continue to have financial responsibility for support and maintenance of the child during the period of the placement. Nothing contained herein shall defeat a claim of jurisdiction by a receiving state sufficient to deal with an act of delinquency or crime committed therein.

(b) When the sending agency is a public agency, it may enter into an agreement with an authorized public or private agency in the receiving state providing for the performance of one or more services in respect of such case by the latter as agent for the sending agency.

(c) Nothing in this Compact shall be construed to prevent a private charitable agency authorized to place children in the receiving state from performing services or acting as agent in that state for a private charitable agency of the sending state; nor to prevent the agency in the receiving state from discharging financial responsibility for the support and maintenance of a child who has been placed on behalf of the sending agency without relieving the responsibility set forth in paragraph (a) hereof.

Article VI. Institutional Care of Delinquent Children.

A child adjudicated delinquent may be placed in an institution in another party jurisdiction pursuant to this Compact but no such placement shall be made unless the child is given a court hearing on notice to the parent or guardian with opportunity to be heard, prior to his being sent to such other party jurisdiction for institutional care and the court finds that:

(1) Equivalent facilities for the child are not available in the sending agency's jurisdiction; and

(2) Institutional care in the other jurisdiction is in the best interest of the child and will not produce undue hardship.

Article VII. Compact Administrator.

The executive head of each jurisdiction party to this Compact shall designate an officer who shall be general coordinator of activities under this Compact in his jurisdiction and who, acting jointly with like officers of other party jurisdictions, shall have power to promulgate rules and regulations to carry out more effectively the terms and provisions of this Compact.

Article VIII. Limitations.

This Compact shall not apply to: (a) the sending or bringing of a child into a receiving state by his parent, stepparent, grandparent, adult brother or sister, adult uncle or aunt, or his guardian and leaving the child with any such relative or nonagency guardian in the receiving state. (b) Any placement, sending or bringing of a child into a receiving state pursuant to any other interstate compact to which both the state from which the child is sent or brought and the receiving state are party, or to any other agreement between said states which has the force of law.

Article IX. Enactment and Withdrawal.

This Compact shall be open to joinder by any state, territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and, with the consent of Congress, the government of Canada or any province thereof. It shall become effective with respect to any such jurisdiction when such jurisdiction has enacted the same into law. Withdrawal from this Compact shall be by the enactment of a statute repealing the same, but shall not take effect until two years after the effective date of such statute and until written notice of the withdrawal has been given by the withdrawing state to the governor of each other party jurisdiction. Withdrawal of a party state shall not affect the rights, duties and obligations under this Compact of any sending agency therein with respect to a placement made prior to the effective date of withdrawal.

Article X. Construction and Severability.

The provisions of this Compact shall be liberally construed to effectuate the purposes thereof. The provisions of this Compact shall be severable and if any phrase, clause, sentence or provision of this Compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this Compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this Compact shall be held contrary to the constitution of any state party thereto, the Compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters. (1971, c. 453, s. 1; 1973, c. 476, s. 138.)

Editor's Note. — The 1973 amendment substituted "Department of Human Resources" for "State Department of Social Services" in Article II(e) and "Secretary of Human Resources" for "Commissioner of Social Services of the State Department of Social Services" in Article II(f).

§ 110-57.2. Financial responsibility under Compact. — Financial responsibility for any child placed pursuant to the provisions of the Interstate Compact on the Placement of Children shall be determined in accordance with the provisions of Article V thereof in the first instance. However, in the event of partial or complete default of performance thereunder, the provisions of any other state laws fixing responsibility for the support of children also may be invoked. (1971, c. 453, s. 2.)

§ 110-57.3. Agreements under Compact. — The officers and agencies of this State and its subdivisions having authority to place children are hereby empowered to enter into agreements with appropriate officers or agencies of or in other party states pursuant to paragraph (b) of Article V of the Interstate

Compact on the Placement of Children. Any such agreement which contains a financial commitment or imposes a financial obligation on this State or subdivision or agency thereof shall not be binding unless it has the approval in writing of the Secretary of Human Resources in the case of the State and of the county director of social services in the case of a county or other subdivision of the State. (1971, c. 453, s. 2; 1973, c. 476, s. 138.)

Editor's Note. — The 1973 amendment substituted "Secretary of Human Resources" for "Commissioner of Social Services."

§ 110-57.4. Visitation, inspection or supervision. — Any requirements for visitation, inspection or supervision of children, homes, institutions or other agencies in another party state which may apply under the laws of this State shall be deemed to be met if performed pursuant to an agreement entered into by appropriate officers or agencies of this State or a subdivision thereof as contemplated by paragraph (b) of Article V of the Interstate Compact on the Placement of Children. (1971, c. 453, s. 2.)

§ 110-57.5. Compact to govern between party states. — The provisions of Article 4 of Chapter 110 of the General Statutes shall not apply to placements made pursuant to the Interstate Compact on the Placement of Children. (1971, c. 453, s. 2.)

§ 110-57.6. Placement of delinquents. — Any court having jurisdiction to place delinquent children may place such a child in an institution or in another state pursuant to Article VI of the Interstate Compact on the Placement of Children and shall retain jurisdiction as provided in Article V thereof. (1971, c. 453, s. 2.)

§ 110-57.7. Compact administrator. — The Governor is hereby authorized to appoint a compact administrator in accordance with the terms of said Article VII. (1971, c. 453, s. 2.)

Article 5.

Interstate Compact on Juveniles.

§ 110-58. Execution of Compact. — The Governor is hereby authorized and directed to execute a compact on behalf of this State with any other state or states legally joining therein in the form substantially as follows: The contracting states solemnly agree:

Article I. Findings and Purposes.

That juveniles who are not under proper supervision and control, or who have absconded, escaped or run away, are likely to endanger their own health, morals and welfare, and the health, morals and welfare of others. The cooperation of the states party to this Compact is therefore necessary to provide for the welfare and protection of juveniles and of the public with respect to

(1) Cooperative supervision of delinquent juveniles on probation or parole;

(2) The return, from one state to another, of delinquent juveniles who have escaped or absconded;

(3) The return, from one state to another, of nondelinquent juveniles who have run away from home; and

(4) Additional measures for the protection of juveniles and of the public, which any two or more of the party states may find desirable to undertake cooperatively.

In carrying out the provisions of this Compact the party states shall be guided by the noncriminal, reformative and protective policies which guide their laws concerning delinquent, neglected or dependent juveniles generally. It shall be the policy of the states party to this Compact to cooperate and observe their respective responsibilities for the prompt return and acceptance of juveniles and delinquent juveniles who become subject to the provisions of this Compact. The provisions of this Compact shall be reasonably and liberally construed to accomplish the foregoing purposes.

Article II. Existing Rights and Remedies.

That all remedies and procedures provided by this Compact shall be in addition to and not in substitution for other rights, remedies and procedures, and shall not be in derogation of parental rights and responsibilities.

Article III. Definitions.

That, for the purposes of this Compact, "delinquent juvenile" means any juvenile who has been adjudged delinquent and who, at the time the provisions of this Compact are invoked, is still subject to the jurisdiction of the court that has made such adjudication or to the jurisdiction or supervision of an agency or institution pursuant to an order of such court; "probation or parole" means any kind of conditional release of juveniles authorized under the laws of the states party hereto; "court" means any court having jurisdiction over delinquent, neglected or dependent children; "state" means any state, territory or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico; and "residence" or any variant thereof means a place at which a home or regular place of abode is maintained.

Article IV. Return of Runaways.

(a) That the parent, guardian, person or agency entitled to legal custody of a juvenile who has not been adjudged delinquent but who has run away without the consent of such parent, guardian, person or agency may petition the appropriate court in the demanding state for the issuance of a requisition for his return. The petition shall state the name and age of the juvenile, the name of the petitioner and the basis of entitlement to the juvenile's custody, the circumstances of his running away, his location if known at the time application is made, and such other facts as may tend to show that the juvenile who has run away is endangering his own welfare or the welfare of others and is not an emancipated minor. The petition shall be verified by affidavit, shall be executed in duplicate, and shall be accompanied by two certified copies of the document or documents on which the petitioner's entitlement to the juvenile's custody is based, such as birth certificates, letters of guardianship, or custody decrees. Such further affidavits and other documents as may be deemed proper may be submitted with such petition. The judge of the court to which this application is made may hold a hearing thereon to determine whether for the purposes of this Compact the petitioner is entitled to the legal custody of the juvenile, whether or not it appears that the juvenile has in fact run away without consent, whether or not he is an emancipated minor, and whether or not it is in the best interest of the juvenile to compel his return to the state. If the judge determines, either with or without a hearing, that the juvenile should be

returned, he shall present to the appropriate court or to the executive authority of the state where the juvenile is alleged to be located a written requisition for the return of such juvenile. Such requisition shall set forth the name and age of the juvenile, the determination of the court that the juvenile has run away without the consent of a parent, guardian, person or agency entitled to his legal custody, and that it is in the best interest and for the protection of such juvenile that he be returned. In the event that a proceeding for the adjudication of the juvenile as a delinquent, neglected or dependent juvenile is pending in the court at the time when such juvenile runs away, the court may issue a requisition for the return of such juvenile upon its own motion, regardless of the consent of the parent, guardian, person or agency entitled to legal custody, reciting therein the nature and circumstances of the pending proceeding. The requisition shall in every case be executed in duplicate and shall be signed by the judge. One copy of the requisition shall be filed with the Compact Administrator of the demanding state, there to remain on file subject to the provisions of law governing records of such court. Upon the receipt of a requisition demanding the return of a juvenile who has run away, the court or the executive authority to whom the requisition is addressed shall issue an order to any peace officer or other appropriate person directing him to take into custody and detain such juvenile. Such detention order must substantially recite the facts necessary to the validity of its issuance hereunder. No juvenile detained upon such order shall be delivered over to the officer whom the court demanding him shall have appointed to receive him, unless he shall first be taken forthwith before a judge of a court in the state, who shall inform him of the demand made for his return, and who may appoint counsel or guardian ad litem for him. If the judge of such court shall find that the requisition is in order, he shall deliver such juvenile over to the officer to whom the court demanding him shall have appointed to receive him. The judge, however, may fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding.

Upon reasonable information that a person is a juvenile who has run away from another state party to this Compact without the consent of a parent, guardian, person or agency entitled to his legal custody, such juvenile may be taken into custody without a requisition and brought forthwith before a judge of the appropriate court who may appoint counsel or guardian ad litem for such juvenile and who shall determine after a hearing whether sufficient cause exists to hold the person, subject to the order of the court, for his own protection and welfare, for such a time not exceeding 90 days as will enable his return to another state party to this Compact pursuant to a requisition for his return from a court of that state. If, at the time when a state seeks the return of a juvenile who has run away, there is pending in the state wherein he is found any criminal charge, or any proceeding to have him adjudicated a delinquent juvenile for an act committed in such state, or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of such state until discharged from prosecution or other form of proceeding, imprisonment, detention or supervision for such offense or juvenile delinquency. The duly accredited officers of any state party to this Compact, upon the establishment of their authority and the identity of the juvenile being returned, shall be permitted to transport such juvenile through any and all states party to this Compact, without interference. Upon his return to the state from which he ran away, the juvenile shall be subject to such further proceedings as may be appropriate under the laws of that state.

(b) That the state to which a juvenile is returned under this Article shall be responsible for payment of the transportation costs of such return.

(c) That "juvenile" as used in this Article means any person who is a minor under the law of the state of residence of the parent, guardian, person or agency entitled to the legal custody of such minor.

ARTICLE V. RETURN OF ESCAPEES AND ABSCONDERS.

(a) That the appropriate person or authority from whose probation or parole supervision a delinquent juvenile has absconded or from whose institutional custody he has escaped shall present to the appropriate court or to the executive authority of the state where the delinquent juvenile is alleged to be located a written requisition for the return of such delinquent juvenile. Such requisition shall state the name and age of the delinquent juvenile, the particulars of his adjudication as a delinquent juvenile, the circumstances of the breach of the terms of his probation or parole or of his escape from an institution or agency vested with his legal custody or supervision, and the location of such delinquent juvenile, if known, at the time the requisition is made. The requisition shall be verified by affidavit, shall be executed in duplicate, and shall be accompanied by two certified copies of the judgment, formal adjudication, or order of commitment which subjects such delinquent juvenile to probation or parole or to the legal custody of the institution or agency concerned. Such further affidavits and documents as may be deemed proper may be submitted with such requisition. One copy of the requisition shall be filed with the Compact Administrator of the demanding state, there to remain on file subject to the provisions of law governing records of the appropriate court. Upon the receipt of a requisition demanding the return of a delinquent juvenile who has absconded or escaped, the court or the executive authority to whom the requisition is addressed shall issue an order to any peace officer or other appropriate person directing him to take into custody and detain such delinquent juvenile. Such detention order must substantially recite the facts necessary to the validity of its issuance hereunder. No delinquent juvenile detained upon such order shall be delivered over to the officer whom the appropriate person or authority demanding him shall have appointed to receive him, unless he shall first be taken forthwith before a judge of an appropriate court in the state, who shall inform him of the demand made for his return and who may appoint counsel or guardian ad litem for him. If the judge of such court shall find that the requisition is in order, he shall deliver such delinquent juvenile over to the officer whom the appropriate person or authority demanding him shall have appointed to receive him. The judge, however, may fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding.

Upon reasonable information that a person is a delinquent juvenile who has absconded while on probation or parole, or escaped from an institution or agency vested with his legal custody or supervision in any state party to this Compact, such person may be taken into custody in any other state party to this Compact without a requisition. But in such event, he must be taken forthwith before a judge of the appropriate court, who may appoint counsel or guardian ad litem for such person and who shall determine, after a hearing, whether sufficient cause exists to hold the person subject to the order of the court for such a time, not exceeding 90 days, as will enable his detention under a detention order issued on a requisition pursuant to this Article. If, at the time when a state seeks the return of a delinquent juvenile who has either absconded while on probation or parole or escaped from an institution or agency vested with his legal custody or supervision, there is pending in the state wherein he is detained any criminal charge or any proceeding to have him adjudicated a delinquent juvenile for an act committed in such state, or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of such state until discharged from prosecution or other form of proceeding, imprisonment, detention or supervision for such offense or juvenile delinquency. The duly accredited officers of any state party to this Compact, upon the establishment of their authority and the identity of the delinquent juvenile being returned, shall be permitted to transport such delinquent juvenile through any and all states party to this Compact, without

interference. Upon his return to the state from which he escaped or absconded, the delinquent juvenile shall be subject to such further proceedings as may be appropriate under the laws of that state.

(b) That the state to which a delinquent juvenile is returned under this Article shall be responsible for the payment of the transportation costs of such return.

Article VI. Voluntary Return Procedure.

That any delinquent juvenile who has absconded while on probation or parole, or escaped from an institution or agency vested with his legal custody or supervision in any state party to this Compact, and any juvenile who has run away from any state party to this Compact, who is taken into custody without a requisition in another state party to this Compact under the provisions of Article IV(a) or Article V(a), may consent to his immediate return to the state from which he absconded, escaped or ran away. Such consent shall be given by the juvenile or delinquent juvenile and his counsel or guardian ad litem, if any, by executing or subscribing a writing, in the presence of a judge of the appropriate court, which states that the juvenile or delinquent juvenile and his counsel or guardian ad litem, if any, consent to his return to the demanding state. Before such consent shall be executed or subscribed, however, the judge, in the presence of counsel or guardian ad litem, if any, shall inform the juvenile or delinquent juvenile of his rights under this Compact. When the consent has been duly executed, it shall be forwarded to and filed with the Compact Administrator of the state in which the court is located and the judge shall direct the officer having the juvenile or delinquent juvenile in custody to deliver him to the duly accredited officer or officers of the state demanding his return, and shall cause to be delivered to such officer or officers a copy of the consent. The court may, however, upon the request of the state to which the juvenile or delinquent juvenile is being returned, order him to return unaccompanied to such state and shall provide him with a copy of such court order; in such event a copy of the consent shall be forwarded to the Compact Administrator of the state to which said juvenile or delinquent juvenile is ordered to return.

Article VII. Cooperative Supervision of Probationers and Parolees.

(a) That the duly constituted judicial and administrative authorities of a state party to this Compact (herein called "sending state") may permit any delinquent juvenile within such state, placed on probation or parole, to reside in any other state party to this Compact (herein called "receiving state") while on probation or parole, and the receiving state shall accept such delinquent juvenile, if the parent, guardian or person entitled to the legal custody of such delinquent juvenile is residing or undertakes to reside within the receiving state. Before granting such permission, opportunity shall be given to the receiving state to make such investigations as it deems necessary. The authorities of the sending state shall send to the authorities of the receiving state copies of pertinent court orders, social case studies and all other available information which may be of value to and assist the receiving state in supervising a probationer or parolee under this Compact. A receiving state, in its discretion, may agree to accept supervision of a probationer or parolee in cases where the parent, guardian or person entitled to the legal custody of the delinquent juvenile is not a resident of the receiving state, and if so accepted the sending state may transfer supervision accordingly.

(b) That each receiving state will assume the duties of visitation and of supervision over any such delinquent juvenile and in the exercise of those duties

will be governed by the same standards of visitation and supervision that prevail for its own delinquent juveniles released on probation or parole.

(c) That, after consultation between the appropriate authorities of the sending state and of the receiving state as to the desirability and necessity of returning such a delinquent juvenile, the duly accredited officers of a sending state may enter a receiving state and there apprehend and retake any such delinquent juvenile on probation or parole. For that purpose, no formalities will be required, other than establishing the authority of the officer and the identity of the delinquent juvenile to be retaken and returned. The decision of the sending state to retake a delinquent juvenile on probation or parole shall be conclusive upon and not reviewable within the receiving state, but if, at the time the sending state seeks to retake a delinquent juvenile on probation or parole, there is pending against him within the receiving state any criminal charge or any proceeding to have him adjudicated a delinquent juvenile for any act committed in such state or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment, detention or supervision for such offense or juvenile delinquency. The duly accredited officers of the sending state shall be permitted to transport delinquent juveniles being so returned through any and all states party to this Compact, without interference.

(d) That the sending state shall be responsible under this Article for paying the costs of transporting any delinquent juvenile to the receiving state or of returning any delinquent juvenile to the sending state.

Article VIII. Responsibility for Costs.

(a) That the provisions of Articles IV(b), V(b) and VII(d) of this Compact shall not be construed to alter or affect any internal relationship among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

(b) That nothing in this Compact shall be construed to prevent any party state or subdivision thereof from asserting any right against any person, agency or other entity in regard to costs for which such party state or subdivision thereof may be responsible pursuant to Articles IV(b), V(b), or VII(d) of this Compact.

Article IX. Detention Practices.

That, to every extent possible, it shall be the policy of states party to this Compact that no juvenile or delinquent juvenile shall be placed or detained in any prison, jail or lockup nor be detained or transported in association with criminal, vicious or dissolute persons.

Article X. Supplementary Agreements.

That the duly constituted administrative authorities of a state party to this Compact may enter into supplementary agreements with any other state or states party hereto for the cooperative care, treatment and rehabilitation of delinquent juveniles whenever they shall find that such agreements will improve the facilities or programs available for such care, treatment and rehabilitation. Such care, treatment and rehabilitation may be provided, in an institution located within any state entering into such supplementary agreement. Such supplementary agreements shall

(1) Provide the rates to be paid for the care, treatment and custody of such delinquent juveniles, taking into consideration the character of facilities, services and subsistance furnished;
(2) Provide that the delinquent juvenile shall be given a court hearing prior to his being sent to another state for care, treatment and custody;
(3) Provide that the state receiving such a delinquent juvenile in one of its institutions shall act solely as agent for the state sending such delinquent juvenile;
(4) Provide that the sending state shall at all times retain jurisdiction over delinquent juveniles sent to an institution in another state;
(5) Provide for reasonable inspection of such institutions by the sending state;
(6) Provide that the consent of the parent, guardian, person or agency entitled to the legal custody of said delinquent juvenile shall be secured prior to his being sent to another state; and
(7) Make provisions for such other matters and details as shall be necessary to protect the rights and equities of such delinquent juveniles and of the cooperating states.

Article XI. Acceptance of Federal and Other Aid.

That any state party to this Compact may accept any and all donations, gifts and grants of money, equipment and services from the federal or any local government, or any agency thereof and from any person, firm or corporation, for any of the purposes and functions of this Compact, and may receive and utilize, the same subject to the terms, conditions and regulations governing such donations, gifts and grants.

Article XII. Compact Administrators.

That the governor of each state party to this Compact shall designate an officer who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms and provisions of this Compact.

Article XIII. Execution of Compact.

That this Compact shall become operative immediately upon its execution by any state as between it and any other state or states so executing. When executed it shall have the full force and effect of law within such state, the form or [of] execution to be in accordance with the laws of the executing state.

Article XIV. Renunciation.

That this Compact shall continue in force and remain binding upon each executing state until renounced by it. Renunciation of this Compact shall be by the same authority which executed it, by sending six months' notice in writing of its intention to withdraw from the Compact to the other states party hereto. The duties and obligations of a renouncing state under Article VII hereof shall continue as to parolees and probationers residing therein at the time of withdrawal until retaken or finally discharged. Supplementary agreements entered into under Article X hereof shall be subject to renunciation as provided by such supplementary agreements, and shall not be subject to the six months' renunciation notice of the present Article.

ARTICLE XV. SEVERABILITY.

That the provisions of this Compact shall be severable and if any phrase, clause, sentence or provision of this Compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person or circumstances is held invalid, the validity of the remainder of this Compact and the applicability thereof to any government, agency, person or circumstances shall not be affected thereby. If this Compact shall be held contrary to the constitution of any state participating therein, the Compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters. (1963, c. 910, s. 1; 1965, c. 925, s. 1.)

State Government Reorganization. — The administration of the compact was transferred to the Department of Human Resources by § 143A-156 (now repealed), enacted by Session Laws 1971, c. 864.

Opinions of Attorney General. — Mrs. Margaret H. Paris, Supervisor, Family & Childrens' Services Section, Department of Social Services, 40 N.C.A.G. 671 (1969).

Applied in Baker v. Baker, 368 F. Supp. 651 (E.D.N.C. 1973).

§ 110-59. Compact Administrator. — Pursuant to said Compact, the Governor is hereby authorized and empowered to designate an officer who shall be the Compact Administrator and who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms of the Compact. Said Compact Administrator shall serve subject to the pleasure of the Governor. The Compact Administrator is hereby authorized, empowered and directed to cooperate with all departments, agencies and officers of and in the government of this State and its subdivisions in facilitating the proper administration of the Compact or of any supplementary agreement or agreements entered into by this State hereunder. (1963, c. 910, s. 2.)

§ 110-60. Supplementary agreements. — The Compact Administrator is hereby authorized and empowered to enter into supplementary agreements with appropriate officials of other states pursuant to the Compact. In the event that such supplementary agreement shall require or contemplate the use of any institution or facility of this State or require or contemplate the provision of any service by this State, said supplementary agreement shall have no force or effect until approved by the head of the department or agency under whose jurisdiction said institution or facility is operated or whose department or agency will be charged with the rendering of such service. (1963, c. 910, s. 3.)

§ 110-61. Discharging financial obligations imposed by Compact or agreement. — The Compact Administrator, subject to the approval of the Director of the Budget, may make or arrange for any payments necessary to discharge any financial obligations imposed upon this State by the Compact or by any supplementary agreement entered into thereunder. (1963, c. 910, s. 4.)

§ 110-62. Enforcement of Compact. — The courts, departments, agencies and officers of this State and subdivisions shall enforce this Compact and shall do all things appropriate to the effectuation of its purposes and intent which may be within their respective jurisdictions. (1963, c. 910, s. 5.)

§ 110-63. Additional procedure for returning runaways not precluded. — In addition to any procedure provided in Articles IV and VI of the Compact for the return of any runaway juvenile, the particular states, the juvenile or his parents, the courts, or other legal custodian involved may agree upon and adopt any other plan or procedure legally authorized under the laws of this State and

the other respective party states for the return of any such runaway juvenile. (1963, c. 910, s. 6.)

§ 110-64. Proceedings for return of runaways under Article IV of Compact; "juvenile" construed. — The judge of any court in North Carolina to which an application is made for the return of a runaway under the provisions of Article IV of the Interstate Compact on Juveniles shall hold a hearing thereon to determine whether for the purposes of the Compact the petitioner is entitled to the legal custody of the juvenile, whether or not it appears that the juvenile has in fact run away without consent, whether or not he is an emancipated minor, and whether or not it is in the best interest of the juvenile to compel his return to the state. The judge of any court in North Carolina finding that a requisition for the return of a juvenile under the provisions of Article IV of the Compact is in order shall upon request fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding. The period of time for holding a juvenile in custody under the provisions of Article IV of the Compact for his own protection and welfare, subject to the order of a court of this State, to enable his return to another state party to the Compact pursuant to a requisition for his return from a court of that state, shall not exceed 30 days. In applying the provisions of Article IV of the Compact to secure the return of a runaway from North Carolina, the courts of this State shall construe the word "juvenile" as used in this Article to mean any male 16 years of age or under and any female 17 years of age or under. (1965, c. 925, s. 2; 1971, c. 1231, s. 2.)

ARTICLE 6.

Governor's Advocacy Council on Children and Youth.

§ 110-65. Short title. — This Article may be cited as the Governor's Advocacy Council on Children and Youth Act. (1971, c. 935, s. 1; 1973, c. 476, s. 182.)

Cross Reference. — As to the organization, powers and duties of the Governor's Advocacy Council on Children and Youth, see §§ 143B-186, 143B-187.

Editor's Note. — The 1973 amendment substituted "Council" for "Commission."

§ 110-66. Legislative purpose and intent. — The General Assembly finds there is need for better planning and more effective coordination among public and private agencies serving children and youth in North Carolina in order to improve inadequate programs, to avoid duplication of effort and waste of resources, to provide for unmet needs, and to improve delivery of services. By this Article creating a unit of State government to be an advocate for the broad needs and interests of children, the General Assembly intends to provide an answer to these problems so that public and private agencies may be more responsive to the needs of children and youth in this State. (1971, c. 935, s. 1.)

§§ 110-67 to 110-70: Repealed by Session Laws 1973, c. 476, s. 182.

§ 110-71. Powers and duties of Council. — The Governor's Advocacy Council on Children and Youth shall have the following powers and duties:

(1) Repealed by Session Laws 1973, c. 476, s. 182.

(2) It shall act as an advocate for children and youth within State and local governments, and with private agencies serving children and youth, and it shall provide assistance in the development and coordination of child advocacy systems at the regional and local levels within the State.

(3) It shall conduct a continuing review of existing programs of State government for children and youth and their families by gathering

data, studying existing services, evaluating the delivery of services, and in other ways that it deems appropriate.

(4) After appropriate review and study, it shall identify needs of children and youth and their families that are not being met by existing programs or that are being met inadequately, and when such gaps or inadequacies in services are identified, it shall recommend such new programs or improvements in existing services as it finds are needed, planning cooperatively with the appropriate State, local, or private agencies.

(5) It shall work with State and local agencies, both public and private, to help them to coordinate existing services more effectively, to engage in joint endeavors, to avoid duplication of services, and in other ways to make more effective use of available resources.

(6) It shall review any new programs affecting children and youth that are proposed by any State agency in order to make to that agency recommendations intended to avoid duplication of services, to promote better planning, to indicate ways in which the proposed program could be improved, or otherwise to make more effective use of available resources.

(7) It shall make reports and recommendations to the Secretary of Human Resources for transmittal to the Governor from time to time when it accumulates data which could aid in State planning or whenever the Governor's Advocacy Council on Children and Youth finds that it would be helpful to make a report.

(8) It shall provide information to State and local agencies serving children and youth and their families, both public and private, as it finds to be appropriate, and provide information to the public concerning the activities of the Governor's Advocacy Council on Children and Youth and its findings.

(9) Each State agency and department having responsibilities for providing services to children and their families, including children with special needs and children in early childhood, shall submit to the Council upon request a plan of services for children that includes:

a. Descriptions of the kinds of services and programs it provides;

b. The characteristics of the children to be served through each program, including eligibility and entrance requirements;

c. The geographic distribution of services;

d. The projected budgets for each service or program as well as the cost per unit of service;

e. The client fees to be charged for each service;

f. The mechanism for evaluating and providing technical assistance and staff development to each service or program; and

g. Provisions for parent and child participation and involvement.

(10) The Council shall review each plan and make recommendations to agencies and departments, and reports to the General Assembly, relative to the expansion, deletion, improvement and coordination of programs and services for children.

(11) To assist children and their parents or guardians in obtaining the assistance and services which the child needs and which are provided by State, local and private agencies or organizations.

(12) To inform the public concerning the importance of early childhood development and related family services, and programs for children with special needs. (1971, c. 935, s. 1; 1973, c. 476, s. 182; c. 1293, s. 9.)

Editor's Note. — The first 1973 amendment substituted "Governor's Advocacy Council on Children and Youth" for "Commission" in the introductory language and in subdivisions (7)

and (8), repealed subdivision (1), relating to appointment of an administrator, and substituted "to the Secretary of Human Resources for transmittal to the Governor" for "to the Governor and the General Assembly" in subdivision (7).

The second 1973 amendment added subdivisions (9) through (12).

§ 110-72: Repealed by Session Laws 1973, c. 476, s. 182.

§§ 110-73 to 110-84: Reserved for future codification purposes.

Article 7.

Day-Care Facilities.

§ 110-85. Legislative intent and purpose. — The General Assembly hereby declares its intent with respect to day care of children:

(1) The State should protect the growing number of children who are placed in day-care facilities or in child-care arrangements when these children are under the supervision and in the care of persons other than their parents, grandparents, guardians or full-time custodians during the day.

(2) This protection should assure that such children are cared for by persons of good moral character, that their physical safety and moral environment are protected, and that the day-care resources conform to minimum standards relating to the health and safety of the children receiving day care.

(3) This protection requires the following elements for a comprehensive approach: mandatory licensing of day-care facilities under minimum standards; promotion of higher levels of day care than required for a license through the development of higher standards which operators may comply with on a voluntary basis; registration of day-care plans which are too small to be regulated through licensing; and a program of education to help operators improve their programs and to develop public understanding of day-care needs and problems. (1971, c. 803, s. 1.)

Cross Reference. — As to privilege license tax on day-care facilities, see § 105-60.

§ 110-86. Definitions. — Unless the context or subject matter otherwise requires, the terms or phrases used in this Article shall be defined as follows:

(1) "Board" means the Child Day-Care Licensing Board created under this Article.

(2) "Day care" includes any child-care arrangement under which a child less than 13 years of age receives care away from his own home by persons other than his parents, grandparents, guardians or full-time custodians on a regular basis for more than four hours per day where a payment, fee or grant is made for care.

(3) "Day-care facility" includes any day-care center or child-care arrangement that provides day care for more than five children and which receives a payment, fee, or grant for any of the children receiving care, wherever operated, and whether or not operated for profit, except that the following are not included: public schools; nonpublic schools whether or not accredited by the State Department of Public Instruction, which regularly and exclusively provides a course of grade school instruction to children who are of public school age; summer

camps having children in full-time residence; summer day camps; and Bible schools normally conducted during vacation periods.

(4) "Day-care plan" includes any day-care program or child-care arrangement where any person provides day care for more than one child and less than six children and receives a payment, fee or grant for any of the children receiving care, wherever operated, and whether or not operated for profit.

(5) "Director" means the Director of the Child Day-Care Licensing Board.

(6) "License" means a license issued by the Board to any day-care facility which meets the statutory standards established under this Article.

(7) "Operator" includes the owner, director or other person having primary responsibility for operation of a day-care facility subject to licensing. (1971, c. 803, s. 1.)

Day-Care Facilities Operated by a Public Agency or with Substantial Public Money Support Are Required to Be Licensed. — See opinion of Attorney General to Mr. Clifton M. Craig, Department of Social Services, 41 N.C.A.G. 887 (1972).

A Day-Care Facility Operated By the Armed Forces on a Federal Reservation Is Subject to Licensing under the Child Day-Care Licensing Act unless the Area Is One in which the Federal Government Has Exclusive Jurisdiction. — See opinion of Attorney General to Mr. John Sokol, N.C. Day-Care Licensing Board, 42 N.C.A.G. 128 (1972).

§ 110-87. Child Day-Care Licensing Board. — (a) There is hereby created the Child Day-Care Licensing Board which shall coordinate all local and State agencies in inspecting, licensing and providing services to day-care facilities as provided by this Article. The Board shall consist of 15 members, five of whom shall be State officials and 10 of whom shall be citizen-members as hereinafter provided.

(b) The five State officials who shall serve on the Board are as follows, except that any of the officials may designate a representative from his department to serve on the Board with full status as a Board member: Commissioner of Insurance, Secretary of Human Resources, Secretary of Human Resources, State Superintendent of Public Instruction and the Secretary of Human Resources.

(c) The 10 citizen-members who serve on the Board shall be appointed by the Governor (except that none shall be employees of the five designated State officials who are Board members) and at least five of said appointees shall be operators of day-care facilities subject to licensing who are actively engaged in the operation for profit. Of the five operators who are operating for profit, one shall be from a facility licensed for no more than 29 children, three shall be from facilities licensed for no more than 70 children and one operator shall be from a facility licensed for more than 70 children. Three appointees shall be citizens not employed by day-care facilities and who have no direct or indirect pecuniary interest in such but two of whom shall be parents of preschool children at the time of their appointment. Two appointees shall be operators of nonprofit day-care facilities. These appointments shall be for terms of six years, with at least three appointees rotating off the Board each two years, except that a Board member may serve more than one term if so appointed by the Governor. In order to provide for rotation, the Governor shall designate three of the initial appointees to serve for two years, three to serve for four years, and four to serve full terms of six years. In case of vacancy, the Governor shall appoint a citizen-member to serve the remainder of the unexpired term. If one of the five appointees who are required to be operators for profit subject to licensing ceases to engage in operating a day-care facility for profit, the office of such Board

member shall become vacant and the Governor shall appoint a qualified operator for profit to serve the remainder of such term.

(d) The Board shall elect its own chairman who shall have been appointed to the Board by the Governor and who shall serve at the pleasure of the Board, except that in no case shall a member of the Board serve as chairman for more than six years. (1971, c. 803, s. 1; 1973, c. 476, ss. 128, 133, 138.)

Editor's Note. — Session Laws 1973, c. 476, ss. 128, 133, and 138 substituted "Secretary of Human Resources" for "State Health Director," "Commissioner of Mental Health" and "Commissioner of Social Services" throughout the General Statutes, subject to certain specified exceptions not including this section. Pursuant to the 1973 act, "Secretary of Human Resources" has been substituted for "Commissioner of Social Services," for "State Health Director" and for "Commissioner of Mental Health" in subsection (b) of this section.

Session Laws 1973, c. 476, s. 10(a), codified as § 143B-10, subsection (a), authorizes the Secretary of Human Resources to "assign or reassign the function vested in him or in his department to any subordinate officer or employee of his department."

§ 110-88. Powers and duties of the Board. — The Board shall have the following powers and duties:

(1) To develop policies and procedures for the issuance of a license to any day-care facility which meets the health and safety standards established under this Article.

(2) To approve the issuance of licenses for day-care facilities based upon inspections by and written reports from existing agencies of State and local government where available, or based upon inspections by and reports from personnel employed by the Board where such services are not otherwise available.

(3) To develop a system or plan for registration of day-care plans in such form and place as shall be determined by the Board so that day-care plans which are not subject to licensing may be identified, so that there can be an accurate census of the number of children placed in day-care resources, and so that providers of day care who do not receive the educational and consultation services related to licensing may receive educational materials or consultation through the Board.

(4) To employ the Director of the Board, who shall be the chief administrator of the programs related to day care authorized by this Article and who shall implement the policies and procedures developed by the Board.

(5) To make rules and regulations and develop policies for implementation of this Article, including procedures for application, approval, renewal and revocation of licenses.

(6) To make rules and regulations for the issuance of a provisional license to a day-care facility which does not conform in every respect with the standards relating to health and safety established in this Article provided that the Director finds, and the Board concurs in the finding that the operator is making a reasonable effort to conform to such standards, except that a provisional license shall not be issued for more than one year and shall not be renewed.

(7) To develop and promulgate standards which reflect higher levels of day care than required by the standards established by this Article, which will recognize better physical facilities, more qualified personnel, and higher quality programs. The Board shall be empowered to issue two grades of licenses: an "A" license for compliance with the provisions of the Article, and an "AA" license for those licensees meeting the voluntary higher standards promulgated by the Board.

(8) To furnish such forms as may be required for implementation of this Article under the procedures developed by the Board.

(9) To serve as an administrative-appeal body to determine all issues related to the issuance, renewal and revocation of licenses.

(10) To receive travel and per diem expenses as authorized for members of State boards under G.S. 138-5. (1971, c. 803, s. 1.)

§ 110-89. Director. — The Director shall be a professional person with leadership and executive abilities who is knowledgeable about day care of children. The Director shall be responsible to the Board and shall serve at its pleasure. (1971, c. 803, s. 1.)

§ 110-90. Powers and duties of Director. — The Director shall have the following powers and duties under the policies, rules and regulations of the Board:

(1) To administer the licensing program for day-care facilities and the registration system for day-care plans.

(2) To obtain and coordinate the necessary services from other State departments and units of local government which are necessary to implement the provisions of this Article.

(3) To employ such administrative personnel and staff as may be necessary to implement this Article where required services, inspections or reports are not available from existing State agencies and units of local government.

(4) To issue a license effective for one year to any day-care facility which meets the standards established by this Article.

(5) To revoke after hearing the license of any day-care facility which ceases to meet the standards established by this Article.

(6) To prosecute or defend on behalf of the State, through the office of the Attorney General, any legal actions arising out of the administration or enforcement of this Article.

(7) To promote and coordinate educational programs and materials for operators of day-care facilities and day-care plans which are designed to improve the quality of day care available in the State, using the resources of other State and local agencies and educational institutions where appropriate.

(8) To issue a rated license when any operator of a day-care facility required to be licensed hereunder has satisfied the Board that it has met the voluntary standards developed and adopted by the Board. (1971, c. 803, s. 1.)

§ 110-91. Mandatory standards for a license. — The following standards relating to the health and safety of children shall be complied with by all day-care facilities, except as otherwise provided in this Article. These standards shall be the only required standards for issuance of a license by the Director under policies and procedures of the Board.

(1) Medical Care and Sanitation. — Each day-care facility, and all personnel, shall meet the minimum health and sanitation standards developed by the Commission for Health Services subject to adoption by the Board not inconsistent with the provisions of this Article. The health and sanitation standards developed by the Commission for Health Services shall cover such matters as the cleanliness of floors, walls, ceilings, storage spaces, utensils, and other facilities; adequacy of ventilation; sanitation of water supply, lavatory facilities, toilet facilities, sewage disposal, food protection facilities, bactericidal treatment of eating and drinking utensils, and solid-waste storage and disposal; methods of food preparation and serving; health of staff members; and such other items and facilities as are necessary in the interest of the public health. Each year, or more often if required by the Board in a particular case, each

day-care facility shall submit evidence satisfactory to the Board that it conforms to these health and sanitation standards.

Each child shall have a medical examination by a licensed physician prior to being admitted or within two weeks following admission to a day-care facility; a record of such examination shall be on file in the records of the facility, provided, however, that no medical certificate shall be required of any child who is and has been in normal health and whose parent, guardian, or full-time custodian objects in writing to a medical examination on religious grounds which conform to the teachings and practice of any recognized church or religious denomination.

Each child shall be immunized in such manner as to meet the requirements of Articles 9 and 9A of Chapter 130 of the General Statutes.

Each day-care facility shall have a plan of emergency medical care which shall include provisions for communication with and transportation to a specified medical resource, unless otherwise previously instructed. No child receiving day care shall be administered any drug or other medication without specific instructions from a physician or the child's parent, guardian or full-time custodian. Medical information on each child in care, including the names, addresses, and telephone numbers of the child's physician and parents, legal guardian or full-time custodian shall be readily available to the staff of the day-care facility in the records of the facility in accordance with a form approved by the Board for this purpose.

There shall be a separate bed, cot or mat for each child to use during rest periods, equipped with individual linen, except for school children who are cared for only during after-school hours; if a mat is used, it shall be of a waterproof, washable material at least two inches thick and shall be folded so that the floor side does not touch the sleeping side. Beds and linens used by members of the household of the operator shall not be used for children receiving care in the day-care facility.

(2) Health-Related Activities. — Each child in a day-care facility shall receive a lunch which is nutritionally adequate for good health. In addition, each child shall receive refreshments or a snack in the morning and the afternoon.

Each day-care facility shall arrange for each child in care to be out-of-doors each day if weather conditions permit.

Each day-care facility shall have a rest period for each child in care after lunch or at some other appropriate time.

No day-care facility shall care for more than 25 children in one group. Facilities providing care for 26 or more children shall provide for two or more groups according to the ages of children and shall provide separate supervisory personnel for each group.

(3) Location. — Each day-care facility shall be located in an area which is free from conditions which are deemed hazardous to the physical and moral welfare of the children in care in the opinion of the Board.

(4) Building. — Each day-care facility shall be located in a building which meets the requirements of the North Carolina Building Code under standards which shall be developed by the Building Code Council, subject to adoption by the Board specifically for day-care facilities, including facilities operated in a private residence. Such standards shall be consistent with the provisions of this Article.

(5) Fire Prevention. — All day-care facilities shall be inspected annually by a local fire department or a volunteer fire department, using fire-prevention standards which shall be developed by the State Insurance Department after consultation with local fire departments and volunteer fire departments, subject to adoption by the Board.

(6) Space Requirements. — There shall be no less than 25 square feet of indoor space for each child for which a day-care facility is licensed, exclusive of closets, passageways, kitchens, and bathrooms, and such floor space shall provide during rest periods 200 cubic feet of air space per child for which the facility is licensed. There shall be adequate outdoor play area for each child under rules and regulations to be adopted by the Board which shall be related to the size and type of facility, availability and location of outside land area, except in no event shall the minimum required exceed 75 square feet per child, which area shall be protected to assure the safety of the children receiving day care by an adequate fence or other protection.

(7) Staff-Child Ratio. — In determining the staff-child ratio, children of the supervisor or other children under 13 years of age shall be included. The Board shall adopt rules and regulations regarding child-staff ratio, provided, however, that such rules and regulations shall in no event require a ratio of staff members to children more stringent than the following:

a. For day-care facilities caring for less than 30 children, the ratios shall be as follows:

1. In facilities licensed for six to 10 children, inclusive, one full-time supervising adult with another person between the ages of 16 and 70 years, inclusive, available for emergencies in relief.
2. In facilities licensed for 11 to 20 children, inclusive, there must be one full-time supervising adult and one full-time staff member, one of whom may have responsibility for food preparation.
3. In facilities licensed for 21 to 29 children, inclusive, there must be one full-time supervising adult and two full-time staff members, one of whom may have responsibility for food preparation.

b. For facilities caring for 30 or more children, the ratio shall be as follows:

Ages of Children	*No. of Children*	*Staff Members*
0 to 2 years	8	1
2 to 3 years	12	1
3 to 4 years	15	1
4 to 5 years	20	1
5 or more years	25	1

1. Children under two years of age in any facility must be kept separate from older children, and with a full-time adult always in attendance.
2. Staff members required to be responsible for the care of children shall not have responsibility for food preparation.

c. To provide for absenteeism and withdrawals without notice, a twenty percent (20%) tolerance shall be allowed as to groups and numbers of children specified in this section and as to the total number for which the facility is licensed, except that no more than 25 children shall be attended by one staff member.

d. Each facility may care for school age children in after-school hours up to twenty percent (20%) in excess of the number for which it is licensed. However, if there are more than 10 after-school-hour children, an additional staff member must be present to supervise them during their hours at the facility, and there shall be no more than 25 of these children in the care of any one staff member.

(8) Qualifications for Staff. — Each day-care facility shall be under the direction or supervision of a literate person at least 21 years of age.

Each staff member employed in a day-care facility supervising children shall be not less than 16 years of age, nor more than 70 years of age. No person shall be an operator of nor be employed in a day-care facility who has been convicted of a crime involving child neglect, child abuse, or moral turpitude, or who is an habitually excessive user of alcohol or who illegally uses narcotic or other impairing drugs, or who is mentally retarded or mentally ill to an extent that may be injurious to children.

(9) Records. — Each day-care facility shall keep accurate records on each child receiving care in the day-care facility in accordance with a form furnished or approved by the Board, and shall submit attendance reports as required by the Board.

Each day-care facility shall keep accurate records on each staff member or other person delegated responsibility for the care of children in accordance with a form approved by the Board.

All records of any day-care facility, except financial records, shall be subject to review by the Director or by duly authorized representatives of the Board or a cooperating agency who shall be designated by the Director, with the approval of the Board.

Any effort to falsify information provided to the Board shall be deemed by the Board to be evidence of violation of this Article on the part of the operator or sponsor of the day-care facility and shall constitute a cause for revoking or denying a license to such day-care facility.

(10) Each operator or staff member shall truly and honestly show each child in his care true love, devotion and tender care. (1971, c. 803, s. 1; 1973, c. 476, s. 128.)

Editor's Note. — The 1973 amendment substituted "Commission for Health Services" for "State Board of Health" in two places in the first paragraph of subdivision (1).

Article 9A of Chapter 130, referred to in subdivision (1) of this section, was repealed by Session Laws 1971, c. 191, which consolidated that article with present Article 9 of Chapter 130.

Size of Group and Child-Staff Ratio in Day-Care Facility. — See opinion of Attorney General to Mrs. Karen James, Office of Child Day-Care Licensing, 42 N.C.A.G. 221 (1973).

Child-Staff Ratio Requirements Are Applicable During All Periods of the Day Unless Modified by Child Day-Care Licensing Board. — See opinion of Attorney General to Mr. John S. Sokol, Director, Child Day-Care Licensing Board, 42 N.C.A.G. 301 (1973).

§ 110-92. Duties of State and local agencies. — Nothing in this Article shall be interpreted to interfere with the authority of the Department of Human Resources to visit or approve or disapprove a day-care facility for purchase of care with federal funds available for such purposes or for placement of children from families receiving financial assistance or other services through the Department of Human Resources or a county department of social services. Provided the Department of Human Resources shall have no authority to inspect a private day-care facility not choosing to participate in federally purchased day-care or family assistance program financed by public or charitable funds.

When requested by an operator of a day-care facility or by the Director, it shall be the duty of local and district health departments to visit and inspect a day-care facility to determine whether the facility complies with the health and sanitation standards required by this Article and with the minimum health and sanitation standards developed by the Commission for Health Services as authorized by G.S. 110-91(1), and to submit written reports on such visits or inspections to the Director on forms approved and provided by the Board.

When requested by an operator of a day-care facility or by the Director, it shall be the duty of the local and district health departments, and any building

inspector, fire prevention inspector, or fireman employed by local government, or any fireman having jurisdiction, or other officials or personnel of local government to visit and inspect a day-care facility for the purposes specified in this Article, including plans for evacuation of the premises and protection of children in case of fire, and to report on such visits or inspections in writing to the Director on forms provided by the Board so that such reports may serve as the basis for action or decisions by the Director or Board as authorized by this Article. (1971, c. 803, s. 1; 1973, c. 476, ss. 128, 138.)

Editor's Note. — The 1973 amendment substituted "Department of Human Resources" for "State Department of Social Services" in two places and for "Department of Social Services" in one place in the first paragraph and substituted "Commission for Health Services" for "State Board of Health" in the second paragraph.

§ 110-93. Licensing procedure. — (a) Each operator of a day-care facility shall annually apply to the Board for a license. The application shall be in such form as is required by the Board. Each operator seeking a license shall be responsible for accompanying his application with the necessary supporting data and reports to show conformity with the standards established or authorized by this Article including reports from the local and district health departments, local building inspectors, local firemen, voluntary firemen, and others, on forms which shall be provided by the Board.

(b) If an operator conforms to the standards established or authorized by this Article as shown in his application and other supporting data, the Director shall issue a license effective for one year subject to suspension or revocation for cause as provided in this Article. If the applicant fails to conform to the required standards, the Director or his staff may issue a provisional license under the policies of the Board provided that the operator shall be notified in writing by registered or certified mail of the reasons for issuance of a provisional license.

(c) Each licensed operator of day-care facility must annually apply in order to renew his license and must accompany such renewal application with such supporting data and reports as are required to show conformity with the standards established under this Article.

(d) If a licensed day-care facility fails to meet or maintain the standards for a license, the Director shall report such fact to the Board which may thereupon notify, by registered or certified mail, the applicant or licensee of his right to appear before the Board at a specified place and time not less than 10 or more than 60 days from the date of the notice, to show cause, if any exists, why the Board should not deny or revoke the license. If the applicant or licensee fails to satisfy the Board at said hearing that the standards have been maintained, the Board may deny or revoke the license. The operator shall retain any current license pending disposition of any appeal. (1971, c. 803, s. 1.)

§ 110-94. Administrative appeal. — Upon receipt by the Director of notice of an appeal, the Director shall arrange for an appeal hearing before the Board within 60 days, provided that the Board may delegate the hearing of appeals to a panel consisting of three or more Board members, at least one of whom must be the operator of a licensed private day-care facility, and may designate a chairman of such panel for the purpose of presiding at such hearings. (1971, c. 803, s. 1.)

§ 110-95. Appeal hearing. — Upon notification by the Board to an operator of his right to appear before the Board as provided in G.S. 110-93(d), or upon receipt of an appeal, the Director shall notify all interested persons of whom he has notice or knowledge of the time and place of the hearing. The operator involved and other persons having a legitimate interest shall have a right to be present, to be represented by counsel, and to present evidence on the issue of

whether the standards involved were complied with by the day-care operator and facility. The Director shall notify the appellant and the operator, if other than the appellant, of the decision of the Board in writing by registered or certified mail, including an explanation of the reasons for such decision. The decision of the Board with regard to any license shall be final. All decisions of the Director and of the Board shall be retained by the Board for two years as matters of public record. (1971, c. 803, s. 1.)

§ 110-96. Judicial review of administrative appeals. — Any party may appeal a decision of the Board to deny or revoke a license to the superior court in the county where the day-care facility is located. Notice of intention to appeal shall be given by registered or certified mail to the Director and to the clerk of superior court of such county within 30 days after receipt of the Board's order by the operator. The right to judicial review shall be deemed waived if notice is not given as herein provided. (1971, c. 803, s. 1.)

§ 110-97. Judicial review hearing. — The appeal hearing shall be de novo before any superior court judge holding court in the district who shall cause sufficient notice of the appeal hearing to be given to all parties of record. The hearing shall be conducted by the judge without a jury, and the court may affirm, reverse, or modify the Board's order. (1971, c. 803, s. 1.)

§ 110-98. Mandatory license. — It shall be unlawful for any day-care facility to offer or provide day care without being licensed under the provisions of this Article. In order to provide for gradual implementation of the licensing program, each day-care facility shall register with the Board between January 1 and April 1, 1972, which registration shall be valid in lieu of license until the day-care facility is licensed or until December 31, 1972, whichever is earlier, provided that the Board, upon recommendation of the Director, may extend the validity of such registration in individual cases until July 1, 1973, as to any day-care facility which is not licensed by January 1, 1973. (1971, c. 803, s. 1.)

§ 110-99. Display of license. — Each day-care facility shall maintain its current license displayed in a prominent place at all times so that the public may be on notice that the facility is licensed and may observe any grade or rating which may appear on the license. (1971, c. 803, s. 1.)

§ 110-100. Licenses are property of the State. — Any license issued to a day-care facility under this Article shall remain the property of the State and may be removed by persons employed or designated by the Director in the event that the license is not renewed or is revoked or has expired or in the event that the grade or rating is changed. (1971, c. 803, s. 1.)

§ 110-101. Registration. — It shall be unlawful for any person to offer or provide a day-care plan unless such day-care plan is registered with the Board in accordance with the system for registration which shall be developed by the Board. (1971, c. 803, s. 1.)

§ 110-102. Information for parents. — The Board shall provide to each operator of a day-care facility a summary of this Article to be furnished by the operator to the parents, guardian, or full-time custodian of each child receiving care in the facility, which summary shall include the name and address of the Director and address of the Board, in such form as shall be provided by the Board to all operators. (1971, c. 803, s. 1.)

§ 110-103. Penalty. — Any person who violates the provisions of G.S. 110-98 through G.S. 110-102 shall be guilty of a general misdemeanor. (1971, c. 803, s. 1.)

§§ 110-104 to 110-114: Reserved for future codification purposes.

ARTICLE 8.

Child Abuse and Neglect.

§ 110-115. Short title. — This Article may be cited as the Child Abuse Reporting Law. (1971, c. 710, s. 1.)

§ 110-116. Legislative intent and purpose. — The General Assembly recognizes the growing problem of child abuse and neglect and that children do not always receive appropriate care and protection from their parents or other caretakers acting in loco parentis. The primary purpose of requiring reports of child abuse and neglect as provided by this Article is to identify any children suspected to be neglected or abused and to assure that protective services will be made available to such children and their families as quickly as possible to the end that such children will be protected, that further abuse or neglect will be prevented, and to preserve the family life of the parties involved where possible by enhancing parental capacity for good child care. (1971, c. 110, s. 1.)

§ 110-117. Definitions. — As used in this Article, unless the context otherwise requires:

(1) "Abused child" means a child less than 16 years of age whose parent or other person responsible for his care:
   a. Inflicts or allows to be inflicted upon such child a physical injury by other than accidental means which causes or creates a substantial risk of death or disfigurement or impairment of physical health or loss or impairment of function of any bodily organ, or
   b. Creates or allows to be created a substantial risk of physical injury to such child by other than accidental means which would be likely to cause death or disfigurement or impairment of physical health or loss or impairment of the function of any bodily organ, or
   c. Commits or allows to be committed any sex act upon a child in violation of law.

(2) "Caretaker" means any person other than a parent who is acting in loco parentis to a child including but not limited to the following: grandparent, uncle or aunt or any blood relative, step-parent; foster parent; house parent or cottage parent or other person supervising a child in a child-caring institution or any State institution, person having custody by court order, and a guardian.

(3) "Director" means a county director of social services.

(4) "Neglected child" means a child less than 16 years of age who comes within the definition of "neglected child" under G.S. 7A-278(4).

(5) "Professional person" means a physician, surgeon, dentist, osteopath, optometrist, chiropractor, podiatrist, physician-resident, intern, a registered or practical nurse, hospital administrator, Christian Science practitioner, medical examiner, coroner, social worker, law-enforcement officer, mental health worker, psychologist, public health worker, or a school teacher, principal, school attendance counselor or other professional personnel in a public or private school.

(6) "Protective services" means casework or other counseling services to parents or other caretakers as provided or arranged by a director utilizing the staff of the county department of social services or other community resources which are designed to help such parents or other caretakers to prevent child abuse or neglect, to improve the quality of child care, to be more adequate parents or caretakers, and to preserve and stabilize family life. (1971, c. 710, s. 1; 1973, c. 1086.)

Editor's Note. — The 1973 amendment inserted "mental health worker, psychologist, public health worker" in subdivision (5).

§ 110-118. Reports of child abuse or neglect. — (a) Any professional person who has reasonable cause to suspect that any child is an abused or neglected child, or any other person having knowledge that any child is an abused child, shall report the case of such child to the director of social services of the county where the child resides or is found.

(b) The report of child abuse or neglect may be made orally, by telephone, or it may be written. The report shall include such information as is known to the person making the report, including the name and address of the child; the name and address of the child's parents or other caretakers; the age of the child; the present whereabouts of the child if not at the home address; the nature and extent of the child's injury or condition resulting from abuse or neglect; and any other information which the person making the report believes might be helpful in establishing the cause of the injuries or the condition resulting from abuse or neglect. If the report of child abuse or neglect is made orally or by telephone, the person making such report shall give his name, address, profession if a professional person, and telephone number if such person has a telephone, and the person making such a report shall confirm the information about child abuse or neglect in writing when requested by the director. If the person making the report is a professional person, the report shall also include his professional opinion as to the nature, extent and causes of the injuries or the condition resulting from abuse or neglect.

(c) Anyone who makes a report pursuant to this statute or who testifies in any judicial proceeding resulting from the report shall be immune from any civil or criminal liability that might otherwise be incurred or imposed for complying with the requirements of this statute, unless such person acted in bad faith or with malicious purpose.

(d) Any physician or administrator of a hospital, clinic or other similar medical facility to which an abused child is brought for medical diagnosis or treatment shall have the right to retain temporary physical custody of such child where the physician who examines the child certifies in writing that the child should remain for medical reasons or that in his opinion it may be unsafe for the child to return to his parents or other caretakers. In such case, the physician or administrator shall notify the parents or other caretakers and the director of the county where the child resides of such action. If the parents or other caretakers contest this action, the parents shall request a hearing before the chief district court judge or some district court judge designated by him within the judicial district wherein the child resides or where the hospital or institution is located for review and determination of whether the child shall be returned to his parents or caretaker. Pending such juvenile hearing, the hospital, clinic or other similar medical facility may retain temporary physical custody of the child or may request the director in the county where the child resides to assume temporary physical custody of the child for placement with a relative or in a foster home under the supervision of the county department of social services. (1971, c. 710, s. 1.)

§ 110-119. Duty of director of social services. — Any director of social services receiving a report of child abuse or neglect shall make a prompt and thorough investigation in order to ascertain the facts of the case and to evaluate the extent of the abuse or neglect.

After investigation and evaluation, the director of social services shall do one of the following, depending upon his findings of abuse or neglect in the particular case:

(1) If the director finds that the child has not been abused or neglected, he shall notify the person making the report of his findings.
(2) If the investigation reveals abuse or neglect, the director shall decide whether immediate removal of the child or any other children in the home is necessary for the protection of such child or children.
a. If immediate removal of the child or other children does not seem necessary, the director shall immediately provide or arrange for protective services. If the parents or other caretakers refuse to accept the protective services provided or arranged by the director, the director shall sign a juvenile petition to invoke the juvenile jurisdiction of the district court for the protection of the child or children.
b. If immediate removal of the child or children seems necessary for the protection of the child or other children in the home, the director shall sign a juvenile petition which alleges the applicable facts to invoke the juvenile jurisdiction of the district court.
(3) If the director finds evidence that a child has been abused, he shall immediately make a report in writing containing his findings along with a copy of the report of child abuse to the district attorney who shall determine whether criminal prosecution is appropriate and who may request the director to sign the appropriate criminal warrant.
(4) The director shall submit a report of the alleged child abuse or neglect to the central registry under the policies adopted by the Social Services Commission.

In performing any of these duties, the county director may utilize the staff of the county department of social services or any other public or private community agencies that may be available. The director may also consult with the available state or local law-enforcement agencies who shall assist in the investigation and evaluation of the seriousness of any report of child abuse or neglect when requested by the director. (1971, c. 710, s. 1; 1973, c. 476, s. 138; c. 1085.)

Editor's Note. — The first 1973 amendment substituted "Social Services Commission" for "State Board of Social Services" in subdivision (4).

The second 1973 amendment substituted "If the director finds evidence that a child has been abused" for "Whether or not the director finds any child to be an abused child" at the beginning of subdivision (3) and substituted "solicitor" for "attorney" near the middle of subdivision (3).

§ 110-120. Immunity of persons reporting. — Any person making a complaint or providing information or otherwise participating in the program authorized by this Article shall be immune from any civil or criminal liability by reason of such action, unless such person acted with malice and without reasonable cause. (1971, c. 710, s. 1.)

§ 110-121. Waiver of privileges. — Neither the physician-patient privilege nor the husband-wife privilege shall be ground for excluding evidence of child abuse or neglect in any judicial proceeding (civil, criminal, or juvenile) in which a child's abuse or neglect is in issue, nor in any judicial proceeding resulting from a report submitted under this Article, both as said privileges relate to the competency of the witness and to the exclusion of confidential communications. (1971, c. 710, s. 1.)

§ 110-122. Central registry. — The Department of Human Resources shall maintain a central registry of abuse and neglect cases reported under this Article in order to compile data for appropriate study of the extent of abuse and neglect within the State and to identify repeated abuses of the same child or

of other children in the same family. This data shall be furnished by county directors of social services to the Department of Human Resources and shall be confidential, subject to policies adopted by the Social Services Commission which provide for its appropriate use for study and research, but in no event shall any data be used at any hearing or court proceeding unless based upon a final judgment of a court of law. (1971, c. 710, s. 1; 1973, c. 476, s. 138.)

Editor's Note. — The 1973 amendment substituted "Department of Human Resources" for "State Department of Social Services" and "Social Services Commission" for "State Board of Social Services."

Chapter 111.

Aid to the Blind.

Article 1.

General Duties of Department of Human Resources.

Sec.
111-1 to 11-3. [Repealed.]
111-4. Register of State's blind.
111-5. Information and aid bureaus.
111-6. Training schools and workshops; training outside State; sale of products; direct relief; matching of federal funds.
111-6.1. Rehabilitation center for the adult blind.
111-7. Promotion visits.
111-8. Investigations; eye examination and treatment.
111-8.1. Certain eye examinations to be reported to Department of Human Resources.
111-9, 111-10. [Repealed.]
111-11. Definition of visually handicapped person.
111-12. [Repealed.]
111-12.1. Acceptance of private contributions for particular facilities authorized.
111-12.2. Contributions treated as State funds to match federal funds.
111-12.3. Rules and regulations as to receiving and expending contributions.
111-12.4. [Repealed.]
111-12.5. Reserve and operating capital fund.
111-12.6. Disposition of funds deposited with or transferred to State Treasurer.

Article 2.

Aid to the Needy Blind.

111-13. Administration of assistance; objective standards for personnel; rules and regulations.
111-14. Application for benefits under Article; investigation and award by county commissioners.
111-15. Eligibility for relief.
111-16. Application for aid; notice of award; review.
111-17. Amount and payment of assistance; source of funds.
111-18. Payment of awards.
111-19. Intercounty transfer of recipients.
111-20. Awards subject to reopening upon change in condition.
111-21. Disqualifications for relief.
111-22. Beneficiaries not deemed paupers.
111-23. Misrepresentation or fraud in obtaining assistance.
111-24. Cooperation with federal departments or agencies; grants from federal government.
111-25. Acceptance and use of federal aid.
111-26. Termination of federal aid.
111-27. Department of Human Resources to promote employment of needy blind persons; vending stands on public property.
111-27.1. Department of Human Resources authorized to conduct certain business operations.
111-27.2. Blind vending-stand operators; retirement benefits.
111-28. Department of Human Resources authorized to receive federal, etc., grants for benefit of needy blind; use of information concerning blind persons.
111-28.1. Department of Human Resources authorized to cooperate with federal government in rehabilitation of blind.
111-29. Expenditure of equalizing funds; grants affording maximum federal aid; lending North Carolina reports.
111-30. Personal representatives for certain recipients of aid to the blind.
111-31. Courts for purposes of §§ 111-30 to 111-33; records.
111-32. Findings under § 111-30 not competent as evidence in other proceedings.
111-33. Sections 111-30 to 111-33 are not to affect provisions for payments for minors.
111-34. [Repealed.]
111-35. Authority of director of social services.
111-36 to 111-40. [Reserved.]

Article 3.

Operation of Vending Facilities on State Property.

111-41. Preference to visually handicapped persons in operation of vending facilities; responsibility of Department of Human Resources.
111-42. Definitions as used in this Article.
111-43. Installation of coin-operated vending machines.
111-44. Location and services provided by State agency.
111-45. Duty of State agency to inform Department.
111-46. Vending facilities operated by those other than visually handicapped persons.
111-47. Exclusions.

Editor's Note — Session Laws 1973, c. 476, s. 143(a), provides that whenever the words "North Carolina State Commission for the Blind" are used or appear in any statute or law of this State, the same shall be deleted and the words "Department of Human Resources" or "Department," as appropriate, shall be inserted in lieu thereof, unless otherwise provided for in the Executive Organization Act of 1973, with the exception that in certain specified references the words "North Carolina State Commission for the Blind" shall be deleted and the words "Commission for the Blind" shall be inserted in lieu thereof. In this Chapter as it stood before the 1973 amendments, the North Carolina State Commission for the Blind was variously referred to as the "North Carolina State Commission for the Blind," the "State Commission for the Blind," or simply as the "Commission." In order to carry out the evident intent of the 1973 act, the codifiers have, in the sections set out herein, substituted references to the Department of Human Resources or the Commission for the Blind, as appropriate, for references to the former North Carolina State Commission for the Blind, even where that agency was not referred to by its full title.

ARTICLE 1.

General Duties of Department of Human Resources.

§§ 111-1 to 111-3: Repealed by Session Laws 1973, c. 476, s. 143.

Cross References. — As to the organization of the Commission for the Blind, see §§ 143B-157 through 143B-160. As to rights of handicapped persons generally, see Chapter 168.

§ 111-4. Register of State's blind. — It shall be the duty of this [the] Department of Human Resources to cause to be maintained a complete register of the blind in the State of North Carolina, which shall describe the condition, cause of blindness, capacity for education and industrial training of each, with such other facts as may seem to the Department of Human Resources to be of value. (1935, c. 53, s. 3; 1973, c. 476, s. 143.)

Editor's Note. — The 1973 amendment substituted "Department of Human Resources" for "Commission."

§ 111-5. Information and aid bureaus. — The Department of Human Resources shall maintain or cause to be maintained one or more bureaus of information and industrial aid, the object of which shall be to aid the blind in finding employment and to teach them trades and occupations which may be followed in their own homes, and to assist them in whatever manner may seem advisable to the Department of Human Resources in disposing of the products of their home industry. (1935, c. 53, s. 4; 1973, c. 476, s. 143.)

Editor's Note. — The 1973 amendment substituted "Department of Human Resources" for "Commission."

§ 111-6. Training schools and workshops; training outside State; sale of products; direct relief; matching of federal funds. — The Department of Human Resources may establish one or more training schools and workshops for employment of suitable blind persons and shall be empowered to equip and maintain the same, to pay to employees suitable wages, and to devise means for the sale and distribution of the products thereof, and may cooperate with shops already established. The Department may also pay for lodging, tuition, support and all necessary expenses for blind persons during their training or instructions in any suitable occupation, whether it be in industrial, commercial, or professional or any other establishments, schools or institutions, or through private instruction wherever in the judgment of the Department such instruction or training can be obtained, when in its judgment the training or instruction in question will contribute to the efficiency or self-support of such blind persons. When special educational opportunities cannot be had within the State, they may be arranged for, at the discretion of the Department, outside of the State. The Department may also, whenever it thinks proper, aid individual blind persons or groups of blind persons to become self-supporting by furnishing material or equipment to them, and may also assist them in the sale and distribution of their products. Any portion of the funds appropriated to the Department under the provisions of this Chapter providing for the rehabilitation of the blind and the prevention of blindness may, when the Commission for the Blind deems wise, be given in direct money payments to the needy blind in accordance with the provisions of G.S. 111-13 to 111-26, and whenever possible such funds may be matched by funds provided by the federal Social Security Act. (1935, c. 53, s. 5; 1937, c. 124, s. 16; 1973, c. 476, s. 143.)

Editor's Note. — The 1973 amendment substituted "Department of Human Resources" for "Commission" in the first sentence, and substituted "Department" for "Commission" in the second and fourth sentences, for "Board" in the third sentence and for "North Carolina State Commission for the Blind" near the beginning of the last sentence. The amendment also deleted "North Carolina State" preceding "Commission for the Blind" near the middle of the last sentence.

§ 111-6.1. Rehabilitation center for the adult blind. — In addition to other powers and duties granted it by law, the Department of Human Resources is hereby authorized and directed to establish and operate a rehabilitation center for the blind for the purpose of assisting them in their mental, emotional, physical, and economic adjustments to blindness through the application of proper tests, measurements, and intensive training in order that they may develop manual dexterity, obstacle and direction awareness, acceptable work habits, and maximum skills in industrial and commercial processes.

The Commission shall make all rules and regulations necessary for this purpose and the Department is hereby authorized to enter into any agreement or contract; to purchase or lease property, both real and personal, accept grants and gifts of whatever nature, and to do all other things necessary to carry out the intent and purposes of such a rehabilitation center.

The Department of Human Resources is hereby authorized to receive grants-in-aid from the federal government for carrying out the provisions of this section, as well as for other related rehabilitation programs for the North Carolina Blind, under the provisions of the act of Congress known as the Barden-Rehabilitation Act (Volume 57, United States Statutes at Large, Chapter 190). Visually handicapped persons as defined in G.S. 111-11, who are physically present in North Carolina may enjoy the benefits of this section or any other related rehabilitation benefits under the Barden-Rehabilitation Act. (1945, c. 698; 1951, c. 319, s. 4; 1971, c. 1215, s. 2; 1973, c. 476, s. 143.)

Editor's Note. — The 1973 amendment substituted "Department of Human Resources" for "North Carolina State Commission for the Blind" in the first paragraph, rewrote the second paragraph and substituted "Department of Human Resources" for "State Commissioner for the Blind" in the third paragraph. The words "State Commissioner for the Blind" appeared in the third paragraph of the section before the amendment as the result of a printer's error. The 1945 act from which the section was codified referred to the "State Commission for the Blind."

§ 111-7. Promotion visits. — The Department of Human Resources may ameliorate the condition of the blind by promotion visits among them and teaching them in their homes as the Department of Human Resources may deem advisable. (1935, c. 53, s. 6; 1973, c. 476, s. 143.)

Editor's Note. — The 1973 amendment substituted "Department of Human Resources" for "Commission."

§ 111-8. Investigations; eye examination and treatment. — It shall be the duty of this [the] Department of Human Resources to continue to make inquiries concerning the cause of blindness, to learn what proportion of these cases are preventable and to inaugurate and cooperate in any such measure for the State of North Carolina as may seem wise. The Department of Human Resources may arrange for the examination of the eyes of the individual blind and partially blind persons and may secure and pay for medical and surgical treatment for such persons whenever in the judgment of a qualified ophthalmologist the eyes of such person may be benefited thereby. (1935, c. 53, s. 7; 1973, c. 476, s. 143.)

Editor's Note. — The 1973 amendment substituted "Department of Human Resources" for "Commission."

§ 111-8.1. Certain eye examinations to be reported to Department of Human Resources. — Whenever, upon examination at a clinic, hospital, or other institution, or elsewhere by a physician, optometrist or other person examining eyes any person is found to have no vision or vision with glasses which is so defective as to prevent the performance of ordinary activities for which eyesight is essential, the physician, the superintendent of such institution or other person who conducted or was in charge of the examination shall within 30 days report the results of the examination to the Department of Human Resources. (1945, c. 72, s. 3; 1973, c. 476, s. 143.)

Editor's Note. — The 1973 amendment substituted "Department of Human Resources" for "North Carolina State Commission for the Blind."

§§ 111-9, 111-10: Repealed by Session Laws 1973, c. 476, s. 143.

§ 111-11. Definition of visually handicapped person. — For purpose of this Chapter, visually handicapped persons are those persons who are totally blind or whose vision with glasses is so defective as to prevent the performance of ordinary activity for which eyesight is essential. (1935, c. 53, s. 10; 1939, c. 124; 1971, c. 1215, s. 3.)

§ 111-12: Repealed by Session Laws 1973, c. 476, s. 143.

§ 111-12.1. Acceptance of private contributions for particular facilities authorized. — In addition to other powers and duties granted it by law, the

Department of Human Resources is hereby authorized to accept contributions of funds made by any private individual, agency or organization even though a condition of the contribution may be that the funds be utilized for the establishment of a particular public or private nonprofit workshop, rehabilitation center or other facility established for the purpose of providing training or employment for eligible blind persons. (1965, c. 906, s. 1; 1973, c. 476, s. 143.)

Editor's Note. — The 1973 amendment substituted "Department of Human Resources" for "North Carolina State Commission for the Blind."

§ 111-12.2. Contributions treated as State funds to match federal funds. — The Department of Human Resources is further authorized to treat any funds received in accordance with G.S. 111-12.1 as State funds for the purpose of accepting any funds made available under federal law on a matching basis for the establishment of such facilities. (1965, c. 906, s. 2; 1973, c. 476, s. 143.)

Editor's Note. — The 1973 amendment substituted "Department of Human Resources" for "Commission."

§ 111-12.3. Rules and regulations as to receiving and expending contributions. — The Department of Human Resources shall make all rules and regulations necessary for the purpose of receiving and expending any funds mentioned in G.S. 111-12.1 to 111-12.3 which are consistent with the principle of obtaining maximum federal participation and in accordance with established budget procedures of the North Carolina Department of Administration. (1965, c. 906, s. 3; 1973, c. 476, s. 143.)

Editor's Note. — The 1973 amendment substituted "Department of Human Resources" for "Commission."

§ 111-12.4: Repealed by Session Laws 1973, c. 476, s. 143.

§ 111-12.5. Reserve and operating capital fund. — Funds now held by the Bureau of Employment of the North Carolina State Commission for the Blind or its successor organization not exceeding one hundred thousand dollars ($100,000) shall be retained by the Department of Human Resources as a reserve and operating capital fund to be expended by the Department of Human Resources for its lawful purposes and objectives in accordance with this Chapter. (1967, c. 1214; 1973, c. 476, s. 143.)

Editor's Note. — The 1973 amendment rewrote this section.

§ 111-12.6. Disposition of funds deposited with or transferred to State Treasurer. — All funds required under this Article to be deposited with or which have been heretofore transferred to the State Treasurer by the Bureau of Employment of the Department of Human Resources, and all future net earnings and accumulations of said Bureau or its successor, other than the one hundred thousand dollars ($100,000) reserve fund herein provided for, from whatever source or sources shall be periodically, but not less frequently than annually, paid over to and retained by the State Treasurer as a separate fund or account. The funds deposited with the State Treasurer shall be invested and the income from corpus shall inure to the sole benefit of the Department of

Human Resources. The income and corpus shall be expended for services to and for the benefit of visually handicapped persons in North Carolina upon recommendation of the Commission for the Blind, by and with the approval of the Governor as the Director of the Budget. (1967, c. 1214; 1973, c. 476, s. 143.)

Editor's Note. — The 1973 amendment substituted "Department of Human Resources" for "North Carolina State Commission for the Blind" in two places and deleted "North Carolina State" preceding "Commission for the Blind" in the last sentence.

ARTICLE 2.

Aid to the Needy Blind.

§ 111-13. Administration of assistance; objective standards for personnel; rules and regulations. — The Department of Human Resources shall be charged with the supervision of the administration of assistance to the needy blind under this Article, and said Department shall establish objective standards for personnel to be qualified for employment in the administration of this Article, and said Commission for the Blind shall make all rules and regulations as may be necessary for carrying out the provisions of this Article, which rules and regulations shall be binding on the boards of county commissioners and all agencies charged with the duties of administering this Article. (1937, c. 124, s. 2; 1973, c. 476, s. 143.)

Editor's Note. — The 1973 amendment substituted "Department of Human Resources" for "North Carolina State Commission for the Blind" and "Department" for "Commission" near the beginning of the section and added "for the Blind" following "Commission" near the middle of the section.

§ 111-14. Application for benefits under Article; investigation and award by county commissioners. — Any person claiming benefit under this Article, shall file with the commissioners of the county in which he or she is residing an application in writing, in duplicate, upon forms prescribed by the Department of Human Resources, which application shall be accompanied by a certificate signed by a reputable physician licensed to practice medicine in the State of North Carolina and who is actively engaged in the treatment of diseases of the human eye, or by an optometrist, whichever the individual may select, to the effect that the applicant is blind or that his or her vision with glasses is so defective as to prevent the performance of ordinary activities for which eyesight is essential. Such application may be made on the behalf of any such blind person by the Department of Human Resources, or by any other person. The board of county commissioners shall cause an investigation to be made by a qualified person, or persons, designated as their agents for this purpose and shall pass upon the said application without delay, determine the eligibility of the applicant, and allow or disallow the relief sought. In passing upon the application, they may take into consideration the facts set forth in the said application, and any other facts that are deemed necessary, and may at any time, within their discretion, require an additional examination of the applicant's eyes by an ophthalmologist designated by the Department of Human Resources. When satisfied with the merits of the application, the board of county commissioners shall allow the same and grant to the applicant such relief as may be suitable and proper, according to the rules and standards established by the Commission for the Blind, not inconsistent with this Article and in accordance with the further provisions hereof. (1937, c. 124, s. 3; 1939, c. 124; 1951, c. 319, s. 1; 1957, c. 674; 1973, c. 476, s. 143.)

Editor's Note. — The 1973 amendment substituted "Department of Human Resources" for "North Carolina State Commission for the Blind" in three places and deleted "North Carolina State" preceding "Commission for the Blind" in the last sentence.

For comment on the enactment of this Article and its application, see 15 N.C.L. Rev. 369.

§ 111-15. Eligibility for relief. — Blind persons having the following qualifications shall be eligible for relief under the provisions of this Article:

(1) Whose vision with glasses is insufficient for use in ordinary occupations for which sight is essential; and

(2) Who are unable to provide for themselves the necessities of life and who have insufficient means for their own support and who have no relative or relatives or other persons in this State able to provide for them who are legally responsible for their maintenance; and

(3) Who, at the time his application is filed, is living in the State of North Carolina voluntarily with the intention of making his home in the State and not for a temporary purpose.

(4) Who are not inmates of any charitable or correctional institution of this State or of any county or city thereof: Provided, that an inmate of such charitable institution may be granted a benefit in order to enable such person to maintain himself or herself outside of an institution; and

(5) Who are not publicly soliciting alms in any part of the State, and who are not, because of physical or mental condition, in need of continuing institutional care. Provided, that the State agency shall, in determining need, take into consideration any other income and resources of the individual claiming aid to the blind; except that, in making such determination, the State agency shall disregard such earned income as will enable said agency to receive the maximum grants from the federal government for such purpose. (1937, c. 124, s. 4; 1951, c. 319, s. 3; 1961, c. 666, s. 1; 1971, c. 1215, s. 1.)

Cross Reference. — For provision that assistance received from a governmental agency, or from a civic or charitable organization, shall not be considered in determining the amount of assistance to be paid under this Chapter, see § 108-24.1.

§ 111-16. Application for aid; notice of award; review. — Promptly after an application for aid is made to the board of county commissioners under this Article the Department of Human Resources shall be notified thereof by mail, by said county commissioners, and one of the duplicate applications for aid made before the board of county commissioners shall be transmitted with said notice.

As soon as any award has been made by the board of county commissioners, or any application declined, prompt notice thereof in writing shall be forwarded by mail to the Department of Human Resources and to the applicant, in which shall be fully stated the particulars of the award or the facts of denial.

Within a reasonable time, in accordance with rules and regulations adopted by the Commission for the Blind, after action by the board of county commissioners, the applicant, if dissatisfied therewith, may appeal directly to the Commission for the Blind. Notice of such appeal must be given in writing to the board of county commissioners, and within 30 days after the receipt of such notice the board of county commissioners shall transmit to the Department of Human Resources copies of all proceedings and documents, including the award or denial, which may be necessary for the hearing of the said appeal, together with the grounds upon which the action was based.

As soon as may be practicable after the receipt of the said notice of appeal, the Commission for the Blind shall notify the applicant of the time and place where the hearing of such appeal will be had. The members of the Commission for the Blind shall hear the said appeal under such rules and regulations not

inconsistent with this Article as it may establish, and shall provide for granting an individual whose claim for aid is denied an opportunity for fair hearing before said Commission for the Blind, and their decision shall be final. Any notice required to be given herein may be given by mail or by personally delivering in writing such notice to the clerk of the board of county commissioners or the executive director of the Department of Human Resources, except that notice of the time and place where the hearings of such appeals will be had shall be given by mail or by personal delivery of such notice in writing direct to the applicant.

In all cases where an appeal shall have been taken by the applicant, the Commission for the Blind shall carefully examine such award or decision, as the case may be, and shall in their discretion, approve, increase, allow or disallow any award so made. Immediately thereafter they shall notify the board of county commissioners and the applicant of such action; and if the award made by the board of county commissioners is changed, notice thereof shall be given by mail to the applicant and the board of county commissioners, giving the extent and manner in which any award has been changed.

If, in the absence of any appeal by the applicant, the North Carolina Department of Human Resources shall make any determination increasing or decreasing the award allowing or disallowing the same, not inconsistent with the rules and regulations promulgated by the Commission for the Blind, the applicant or board of county commissioners shall have the right, within 10 days from notice thereof, to have such order reviewed by the Commission for the Blind. The procedure in such cases shall be as provided in the section on appeals to the Commission by the applicant. (1937, c. 124, s. 5; 1971, c. 603, s. 1; 1973, c. 476, s. 143.)

Editor's Note. — The 1973 amendment, substituted "Department of Human Resources" for "North Carolina State Commission for the Blind" in the first, second and third paragraphs and in the last sentence of the fourth paragraph, deleted "North Carolina State" preceding "Commission for the Blind" in two places in the first sentence of the third paragraph, added "for the Blind" following "said Commission" in the second sentence of the fourth paragraph and rewrote the fifth and sixth paragraphs.

§ 111-17. Amount and payment of assistance; source of funds. — When the board of county commissioners is satisfied that the applicant is entitled to relief under the provisions of this Article, as provided in G.S. 111-14, they shall order necessary relief to be granted under the rules and regulations prescribed by the Commission for the Blind, to be paid from county, State and federal funds available, said relief to be paid in monthly payments from funds hereinafter mentioned.

At the time of fixing the annual budget for the fiscal year beginning July 1, 1937, and annually thereafter, the board of county commissioners in each county shall, based upon such information as they are able to secure and with such information as may be furnished to them by the Department of Human Resources, estimate the number of needy blind persons in such county who shall be entitled to aid under the provisions of this Article and the total amount of such county's part thereof required to be paid by such county. Each county shall make appropriations for the purposes of this Article in an amount sufficient to cover its share of aid to the blind and may fund them by levy of property taxes pursuant to G.S. 153A-149 and by the allocation of other revenues whose use is not otherwise restricted by law. This provision is mandatory on each county in the State. Any court of competent jurisdiction is authorized by mandamus to enforce the foregoing provisions. No funds shall be allocated to any county by the Department of Human Resources until the provisions hereof have been fully complied with by such county.

In case such appropriation is exhausted within the year and is found to be insufficient to meet the county's part of the amount required for aid to the needy blind, such deficiency may be borrowed, if within constitutional limitations, at the lowest rate of interest obtainable, not exceeding six percent (6%), and provision for payment thereof shall be made in the next annual budget and tax levy.

The board of county commissioners in the several counties of the State shall cause to be transmitted to the State Treasurer their share of the total amount of relief granted to the blind applicants. Such remittances shall be made by the several counties in equal monthly installments on the first day of each month, beginning July 1, 1937. The State Treasurer shall deposit said funds and credit same to the account of the Department of Human Resources to be employed in carrying out the provisions of this Article.

Within the limitations of the State appropriation, the maximum payment for aid to the blind is to be such as will make possible maximum matching funds by the federal government. (1937, c. 124, s. 6; 1961, c. 666, s. 3; 1973, c. 476, s. 143; c. 803, s. 11.)

Editor's Note. — The first 1973 amendment deleted "North Carolina State" preceding "Commission for the Blind" in the first paragraph and substituted "Department of Human Resources" for "North Carolina State Commission for the Blind" in two places in the second paragraph and in the last sentence of the fourth paragraph.

The second 1973 amendment rewrote the second and third sentences of the second paragraph and deleted the former fourth sentence of that paragraph, which declared taxes levied under that paragraph to be for a special purpose and levied with the consent of the General Assembly.

Cited in Atlantic Coast Line Ry. v. Beaufort County, 224 N.C. 115, 29 S.E.2d 201 (1944).

§ 111-18. Payment of awards. — After an award to a blind person has been made by the board of county commissioners, and approved by the Department of Human Resources the Department of Human Resources shall thereafter pay to such person to whom such award is made the amount of said award in monthly payments, or in such manner and under such terms as the Department of Human Resources shall determine. Such payment shall be made by warrant of the State Auditor, drawn upon such funds in the hands of the State Treasurer, at the instance and request and upon a proper voucher signed by the Secretary of Human Resources, and shall not be subject to the provisions of the Executive Budget Act as to approval of said expenditure.

It is intended that awards paid to recipients under this Article be for the purpose of assisting in defraying the recipient's day-to-day living expenses. To better achieve this purpose it is hereby provided that no moneys belonging to a recipient of aid to the blind under this Article identifiable as moneys paid pursuant to an aid to the blind award shall be subject to levy under execution, attachment or garnishment. (1937, c. 124, s. 7; 1971, c. 177; c. 603, s. 2; 1973, c. 476, s. 143.)

Editor's Note. — The 1973 amendment substituted "Department of Human Resources" for "North Carolina State Commission for the Blind" three times in the first sentence of the first paragraph and substituted "Secretary of Human Resources" for "executive director of the North Carolina State Commission for the Blind" in the second sentence of the first paragraph.

§ 111-19. Intercounty transfer of recipients. — Any recipient of aid to the blind under this Article who moves to another county of this State shall be entitled to receive aid to the blind in the county to which he has moved and the board of county commissioners of such county, or its authorized agent, is hereby directed to make the appropriate aid to the blind grant to such recipient subject

to the rules and regulations of the Commission for the Blind, beginning with the next payment period after such recipient has established settlement in the county to which he has moved by continuously maintaining a residence therein for a period of 90 days. The county from which a recipient moves shall continue to pay aid to such recipient until such time as the recipient becomes qualified to receive aid from the county to which he has moved. The county from which a recipient has moved shall forthwith transfer all necessary records relating to the recipient to the appropriate board of county commissioners, or its authorized agent, of the county to which the recipient has moved immediately upon the recipient becoming qualified to receive aid from such county. (1937, c. 124, s. 8; 1947, c. 374; 1965, c. 905; 1971, c. 190, ss. 1, 2; 1973, c. 476, s. 143.)

Editor's Note. — The 1973 amendment deleted "North Carolina State" preceding "Commission for the Blind."

§ 111-20. Awards subject to reopening upon change in condition. — All awards to needy blind persons made under the provisions of this Article shall be made subject to reopening and reconsideration at any time when there has been any change in the circumstances of any needy blind person or for any other reason. The Department of Human Resources and the board of county commissioners of each of the counties in which awards have been made shall at all times keep properly informed as to the circumstances and conditions of the persons to whom the awards are made, making reinvestigations annually, or more often, as may be found necessary. The Department of Human Resources may at any time present to the proper board of county commissioners any case in which, in their opinion, the changed circumstances of the case should be reconsidered. The board of county commissioners shall reconsider such cases and any and all other cases which, in the opinion of the board of county commissioners, deserve reconsideration. In all such cases notice of the hearing thereon shall be given to the person to whom the award has been made. Any person to whom an award has been made may apply for a reopening and reconsideration thereof. Upon such hearing, the board of county commissioners may make a new award increasing or decreasing the former award or leaving the same unchanged, or discontinuing the same, as it may find the circumstances of the case to warrant, such changes always to be within the limitations provided by this Article and in accordance with the terms hereof.

Any changes made in such award shall be reported to the Department of Human Resources, and shall be subject to the right of appeal and review, as provided in G.S. 111-16. (1937, c. 124, s. 9; 1971, c. 160; 1973, c. 476, s. 143.)

Editor's Note. — The 1973 amendment substituted "Department of Human Resources" for "North Carolina State Commission for the Blind."

§ 111-21. Disqualifications for relief. — No aid to needy blind persons shall be given under the provisions of this Article to any individual for any period with respect to which he is receiving aid under the laws of North Carolina providing aid for dependent children and/or relief for the aged, and/or aid for the permanently and totally disabled. (1937, c. 124, s. 10; 1951, c. 319, s. 2.)

§ 111-22. Beneficiaries not deemed paupers. — No blind person shall be deemed a pauper by reason of receiving relief under this Article. (1937, c. 124, s. 11.)

§ 111-23. Misrepresentation or fraud in obtaining assistance. — Any person who shall obtain, or attempt to obtain, by means of a willful, false

statement, or representation, or impersonation, or other fraudulent devices, assistance to which he is not entitled shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than five hundred dollars ($500.00), or by imprisonment in the county jail for not more than three months, or by both such fine and imprisonment. The superior court and the recorders' courts shall have concurrent jurisdiction in all prosecutions arising under this Article. (1937, c. 124, s. 12.)

§ 111-24. Cooperation with federal departments or agencies; grants from federal government. — The Department of Human Resources is hereby empowered, authorized and directed to cooperate with the appropriate federal department or agency charged with the administration of the Social Security Act in any reasonable manner as may be necessary to qualify for federal aid for assistance to the needy blind and in conformity with the provisions of this Article, including the making of such reports in such form and containing such information as the appropriate federal department or agency may from time to time require, and the compliance with such regulations as the appropriate federal department or agency may from time to time find necessary to assure the correctness and verification of such reports.

The Department of Human Resources is hereby further empowered and authorized to receive grants-in-aid from the United States government for assistance to the blind and grants made for payment of costs of administering the State plan for aid to the blind, and all such grants so received hereunder shall be paid into the State treasury and credited to the account of the Department of Human Resources in carrying out the provisions of the Article. (1937, c. 124, s. 13; 1971, c. 349, s. 1; 1973, c. 476, s. 143.)

Editor's Note. — The 1973 amendment substituted "Department of Human Resources" for "North Carolina State Commission for the Blind."

§ 111-25. Acceptance and use of federal aid. — The Department of Human Resources may expend under the provisions of the Executive Budget Act, such grants as shall be made to it for paying the cost of administering this Chapter by the appropriate federal department or agency under the Social Security Act. (1937, c. 124, s. 14; 1971, c. 349, s. 2; 1973, c. 476, s. 143.)

Editor's Note. — The 1973 amendment substituted "Department of Human Resources" for "Commission for the Blind."

§ 111-26. Termination of federal aid. — If for any reason there should be a termination of federal aid as anticipated in this Article, then and in that event this Article shall be ipso facto repealed and rendered null and void: Provided, however, such repeal shall not become effective or be in force unless and until the Governor of the State of North Carolina has issued a proclamation duly attested by the Secretary of the State of North Carolina to the effect that there has been a termination of such federal aid. In the event that this Article should be ipso facto repealed as herein provided, the State funds on hand shall be converted into the general fund of the State for such use as may be authorized by the Director of the Budget, and the county funds accumulated by the provisions of this Article in the respective counties of the State shall be converted into the general fund of such counties for such use as may be authorized by the county commissioners. (1937, c. 124, s. 15½.)

§ 111-27. Department of Human Resources to promote employment of needy blind persons: vending stands on public property. — For the purpose

of assisting blind persons to become self-supporting, the Department of Human Resources is hereby authorized to carry on activities to promote the employment of needy blind persons, including the licensing and establishment of such persons as operators of vending stands in public buildings. The said Department may cooperate with the federal government in the furtherance of the provisions of the act of Congress known as the Randolph-Sheppard Bill (H.R. 4688) providing for the licensing of blind persons to operate vending stands in federal buildings, or any other acts of Congress which may be hereafter enacted.

The board of county commissioners of each county and the commissioners or officials in charge of various State and municipal buildings are hereby authorized and empowered to permit the operation of vending stands by needy blind persons on the premises of any State, county or municipal property under their respective jurisdictions: Provided, that such operators shall be first licensed by the Department of Human Resources: Provided further, that in the opinion of the commissions or officials having control and custody of such property, such vending stands may be properly and satisfactorily operated on such premises without undue interference with the use and needs thereof for public purposes. (1939, c. 123; 1973, c. 476, s. 143.)

Editor's Note. — The 1973 amendment substituted "Department of Human Resources" for "North Carolina State Commission for the Blind" and "Department" for "Commission."

§ 111-27.1. Department of Human Resources authorized to conduct certain business operations. — For the purpose of assisting blind persons to become self-supporting the Department of Human Resources is hereby authorized to carry on activities to promote the rehabilitation and employment of the blind, including the operation of various business enterprises suitable for the blind to be employed in or to operate. The Executive Budget Act shall apply to the operation of such enterprises as to all appropriations made by the State to aid in the organization and the establishment of such businesses. Purchases and sales of merchandise or equipment, the payment of rents and wages to blind persons operating such businesses, and other expenses thereof, from funds derived from local subscriptions and from the day-by-day operations shall not be subject to the provisions of law regulating purchases and contracts, or to the deposit and disbursement thereof applicable to State funds but shall be supervised by the Department of Human Resources. All of the business operations under this law, however, shall be subject to regular audits by the State Auditor. Blind or visually handicapped employees or vending-stand operators employed by the Department of Human Resources are hereby declared to be State employees. (1945, c. 72, s. 2; 1971, c. 1025, s. 1; 1973, c. 476, s. 143.)

Editor's Note. — The 1973 amendment substituted "Department of Human Resources" for "North Carolina State Commission for the Blind" in the first and last sentences and for "State Commission for the Blind" at the end of the third sentence and deleted "Bureau of Employment for the Blind Division" preceding "are hereby declared" in the last sentence.

§ 111-27.2. Blind vending-stand operators; retirement benefits. — The Department of Human Resources is authorized and empowered to continue and maintain, in its discretion, any existing retirement system providing retirement benefits for blind vending-stand operators and to expend funds to provide necessary contributions to any existing retirement system for blind vending-stand operators to the extent that the Department determines such retirement system to be in the best interest of the blind vending-stand operators. (1969, c. 1255, s. 4; 1973, c. 476, s. 143.)

Editor's Note. — The 1973 amendment substituted "Department of Human Resources" for "North Carolina State Commission for the Blind" and "Department" for "Commission."

§ 111-28. Department of Human Resources authorized to receive federal, etc., grants for benefit of needy blind; use of information concerning blind persons. — The Department of Human Resources is hereby authorized and empowered to receive grants-in-aid from the federal government or any State or federal agency for the purpose of rendering other services to the needy blind and those in danger of becoming blind; and all such grants so made and received shall be paid into the State treasury and credited to the account of the Department of Human Resources, to be used in carrying out the provisions of this law.

The Commission for the Blind is hereby further authorized and empowered to make such rules and regulations as may be required by the federal government or State or federal agency as a condition for receiving such federal funds, not inconsistent with the laws of this State.

Whenever the words "Social Security Board" appear in G.S. 111-6, 111-13 to 111-26 the same shall be interpreted to include any agency of the federal government which may be substituted therefor by law.

The Department of Human Resources is hereby authorized and empowered to enter into reciprocal agreements with public welfare agencies in other states relative to the provision of assistance and services to residents, nonresidents, or transients, and cooperate with other agencies of the State and federal governments in the provisions of such assistance and services and in the study of the problems involved.

The Department of Human Resources is hereby authorized and empowered to establish and enforce reasonable rules and regulations governing the custody, use and preservation of the records, papers, files, and communications of the Department.

It shall be unlawful, except for purposes directly connected with the administration of aid to the needy blind and in accordance with the rules and regulations of the Department of Human Resources, for any person or persons to solicit, disclose, receive, make use of, or to authorize, knowingly permit, participate in, or acquiesce in the use of, any list of or name of, or any information concerning, persons applying for or receiving aid to the needy blind, directly or indirectly derived from the records, papers, files, or communications of the Department of Human Resources or the board of county commissioners or the county social services department, or acquired in the course of the performance of official duties.

Notwithstanding the above, the Department of Human Resources is authorized to release to the North Carolina Department of Motor Vehicles and the North Carolina Department of Revenue the name and medical records of any person listed in the register of the blind in this State maintained under the provisions of G.S. 111-4. All information and documents released to the Department of Motor Vehicles and the Department of Revenue shall be treated by those departments as confidential for their use only and shall not be released by them to any person for commercial or political purposes or for any purpose not directly connected with the administration of Chapters 20 and 105 of the General Statutes of this State. (1939, c. 124; 1941, c. 186; 1969, cc. 871, 982; 1973, c. 476, s. 143.)

Editor's Note. — The 1973 amendment deleted "North Carolina State" preceding "Commission for the Blind" in the second paragraph and substituted "Department of Human Resources" for "North Carolina State Commission for the Blind" and for "State Commission for the Blind" throughout the rest of the section.

§ 111-28.1. Department of Human Resources authorized to cooperate with federal government in rehabilitation of blind. — The Department of Human Resources is hereby authorized and empowered to make the necessary rules and regulations to cooperate with the federal government in the furtherance of the provisions of the act of Congress known as the Barden-Rehabilitation Act (Volume 57, United States Statutes at Large, Chapter 190) providing for the rehabilitation of the blind. (1945, c. 72, s. 1; 1973, c. 476, s. 143.)

Editor's Note. — The 1973 amendment substituted "Department of Human Resources" for "North Carolina State Commission for the Blind."

§ 111-29. Expenditure of equalizing funds; grants affording maximum federal aid; lending North Carolina reports. — In addition to the powers and duties imposed upon the Department of Human Resources, the said Department shall be and hereby is charged with the powers and duties hereinafter enumerated; that is to say:

(1) The Department of Human Resources is hereby authorized to expend such funds as are appropriated to it as an equalizing fund for aid to the needy blind for the purpose of equalizing the financial burden of providing relief to the needy blind in the several counties of the State, and equalizing the grants received by the needy blind recipients. Such amount shall be expended and disbursed solely for the use of the needy blind coming within the eligibility provisions outlined in Chapter 124 of the Public Laws of 1937. Said amount shall be distributed to the counties according to the needs therein in conformity with the rules and regulations adopted by the Commission for the Blind, producing as far as possible a just and fair distribution thereof.

(2) The Department of Human Resources is hereby authorized to make such grants to the needy blind of the State as will enable said Department to receive the maximum grants from the federal government for such purpose.

(3) The Department of Human Resources is hereby authorized to work out plans with the Secretary of State for lending to needy blind lawyers volumes of the North Carolina reports in his custody that are unused or have become damaged. The Secretary of State is hereby authorized to lend such reports to the Department of Human Resources for relending to needy blind lawyers. Such reports may be recalled at any time by the Secretary of State upon giving 15 days' written notice to the Department of Human Resources which shall remain responsible for said reports until they are returned. The Department shall relend such reports only to blind lawyers, who, after an investigation by the Department, are determined to have no income, or an income insufficient to purchase such reports. (1943, c. 600; 1973, c. 476, s. 143.)

Editor's Note. — The 1973 amendment deleted "North Carolina State" preceding "Commission for the Blind" near the end of subdivision (1) and substituted "Department of Human Resources" for "North Carolina State Commission for the Blind" and "Commission for the Blind" and substituted "Department" for "Commission" throughout the rest of the section.

§ 111-30. Personal representatives for certain recipients of aid to the blind. — If any otherwise qualified applicant for or recipient of aid to the blind is or shall become unable to manage the assistance payments, or otherwise fails so to manage, to the extent that deprivation or hazard to himself or others results, a petition may be filed by a relative of said blind person, or other interested

person, or by the Secretary of Human Resources before the appropriate court under G.S. 111-31, in the form of a verified written application for the appointment of a personal representative for the purpose of receiving and managing public assistance payments for any such recipient, which application shall allege one or more of the above grounds for the legal appointment of such personal representative.

The court shall summarily order a hearing on the petition and shall cause the applicant or recipient to be notified at least five days in advance of the time and place for the hearing. Findings of fact shall be made by the court without a jury, and if the court shall find that the applicant for or recipient of aid to the blind is unable to manage the assistance payments, or otherwise fails so to manage, to the extent that deprivation or hazard to himself or others results, the court may thereupon enter an order embracing said findings and appointing some responsible person as personal representative of the applicant or recipient for the purposes set forth herein. The personal representative so appointed shall serve with or without bond, in the discretion of the court, and without compensation. He will be responsible for receiving the monthly assistance payment and using the proceeds of such payment for the benefit of the recipient of aid to the blind. Such personal representative shall be responsible to the court for the faithful discharge of the duties of his trust. The court may consider the recommendation of the Secretary of Human Resources in the selection of a suitable person for appointment as personal representative for the limited purposes of G.S. 111-30 to 111-33. The personal representative so appointed may be removed by the court, and the proceeding dismissed, or another suitable personal representative appointed. All costs of court with respect to any such proceedings shall be waived.

From the order of the court appointing or removing such personal representative, an appeal may be had to the judge of superior court who shall hear the matter de novo without a jury. (1945, c. 72, s. 4; 1953, c. 1000; 1961, c. 666, s. 2; 1971, c. 603, s. 3; 1973, c. 476, s. 138.)

Editor's Note. — The 1973 amendment substituted "Secretary of Human Resources" for "Director of Social Services." The amendatory act referred to the "Commission of Social Services" rather than to the "Director"; however, the act has been given effect in this section according to its evident intent.

§ 111-31. Courts for purposes of §§ 111-30 to 111-33; records. — For the purposes of G.S. 111-30 to 111-33 the court may be either a domestic relations court established pursuant to Article 13, Chapter 7, General Statutes, or the clerk of the superior court in the county having responsibility for the administration of the particular aid to the blind payments. The court may, for the purposes of G.S. 111-30 to 111-33, direct the Secretary of Human Resources to maintain records pertaining to all aspects of any personal representative proceeding, which the court may adopt as the court's record and in lieu of the maintenance of separate records by the court. (1961, c. 666, s. 2; 1971, c. 603, s. 4; 1973, c. 476, s. 138.)

Editor's Note. — The 1973 amendment substituted "Secretary of Human Resources" for "Director of Social Services." The amendatory act referred to the "Commissioner of Social Services" rather than to the "Director"; however, the act has been given effect in this section according to its evident intent.

Article 13, Chapter 7, referred to in this section, was repealed by Session Laws 1971, c. 377, s. 32. For present provisions as to courts, see Chapter 7A.

§ 111-32. Findings under § 111-30 not competent as evidence in other proceedings. — The findings of fact under the provisions of G.S. 111-30 shall not be competent as evidence in any case or proceeding dealing with any subject matter other than provided in G.S. 111-30 to 111-33. (1961, c. 666, s. 2.)

§ 111-33. Sections 111-30 to 111-33 are not to affect provisions for payments for minors. — Nothing in G.S. 111-30 to 111-33 is to be construed as affecting that portion of the State plan for aid to the blind which provides that payments for eligible blind minors should be made to the parent, legal guardian, relatives or other persons "in loco parentis" of the blind minor, and that payments may be made to the minor if he is emancipated. (1961, c. 666, s. 2.)

§ 111-34: Repealed by Session Laws 1973, c. 476, s. 143.

§ 111-35. Authority of director of social services. — The respective boards of county commissioners of each county are hereby authorized to empower and confer upon the county director of social services for their respective counties the authority to perform any or all acts or functions which the previous sections of this Article direct or authorize the county boards of commissioners to perform. Any act or function performed by a county director of social services under the authority of this section shall be reported by him to the respective county board of commissioners for its review, and for alternative action or disposition where deemed appropriate by such board. Provided that the respective boards of county commissioners shall make no alternative or different disposition of a matter which the county director of social services is empowered to act upon which would prejudically affect the status of any aid to the blind recipient without first affording such recipient reasonable notice and opportunity to be heard. (1971, c. 348, s. 1.)

§§ 111-36 to 111-40: Reserved for future codification purposes.

ARTICLE 3.

Operation of Vending Facilities on State Property.

§ 111-41. Preference to visually handicapped persons in operation of vending facilities; responsibility of Department of Human Resources. — In order to promote the employment and the self-sufficiency of visually handicapped persons in North Carolina, State agencies shall upon the request of the Department of Human Resources give preference to visually handicapped persons in the operation of vending facilities on State property. The Department of Human Resources shall encourage and assist the operation of vending facilities by visually handicapped persons. (1973, c. 1280, s. 1.)

Editor's Note. — Session Laws 1973, c. 1280, s. 1, contains a section numbered § 111-49, which is a severability clause.

§ 111-42. Definitions as used in this Article. — (a) "Regular vending facility" means a vending facility where food preparation or cooking is not done on the State property.

(b) "State agency" means department, commission, agency or instrumentality of the State.

(c) "State property or State building" means building and land owned, leased, or otherwise controlled by the State, exclusive of schools, colleges and universities, the North Carolina State Fair, and the State Legislative Building.

(d) "Vending facility" includes a snack bar, cafeteria, restaurant, cafe, concession stand, vending stand, cart service, or other facilities at which food, drinks, novelties, newspapers, periodicals, confections, souvenirs, tobacco products or related items are regularly sold.

(e) "Visually handicapped" means a person who is totally blind or whose vision with glasses is so defective as to prevent the performance of ordinary activity for which eyesight is essential and who is registered pursuant to G.S. 111-4. (1973, c. 1280, s. 1.)

§ 111-43. Installation of coin-operated vending machines. — In locations where the Department determines that a vending facility may not be operated or should not continue to operate due to insufficient revenues, the Department shall have the first opportunity to secure, by negotiation of a contract with one or more licensed commercial vendors, coin-operated vending machines for the location. Profits from coin-operated vending machines secured by the Department shall be used by the Department for the support of vending facilities operated by the visually handicapped. (1973, c. 1280, s. 1.)

§ 111-44. Location and services provided by State agency. — If the Department of Human Resources shall determine that a location is suitable for the operation of a vending facility by a visually handicapped person, the State agency with authority over the location shall provide proper space, plumbing, lighting, and electrical outlets for the vending facility in the original planning and construction, or in alteration and renovation of present location. The State agency shall provide necessary utilities, janitorial services and garbage disposal for the operation of the vending facility. Space for the vending facilities and service therefor shall be provided without charge. (1973, c. 1280, s. 1.)

§ 111-45. Duty of State agency to inform Department. — It shall be the duty of the State agencies to inform the Department of existing and prospective locations for vending facilities and coin-operated vending machines and to prescribe regulations (upon request of the Department) to promote the successful operation of the vending facilities of the visually handicapped. (1973, c. 1280, s. 1.)

§ 111-46. Vending facilities operated by those other than visually handicapped persons. — Where vending facilities on State property are operated by those other than the visually handicapped persons on the date of enactment of this Article, the contract of these vending facilities shall not be renewed or extended unless the Secretary of the Department of Human Resources is notified thereof and he determines within 30 days of such notification that the vending facilities are not, or cannot become, suited for operation by the visually handicapped. However, if the Secretary of the Department of Human Resources within 30 days of the date of such notification fails to provide for the operation of the vending facilities by the visually handicapped, the existing contract may be renewed or extended. (1973, c. 1280, s. 1.)

§ 111-47. Exclusions. — (a) This Article is not intended to cover food services provided by hospitals or residential institutions as a direct service to patients, inmates, trainees, or otherwise institutionalized persons.

(b) This Article shall not prohibit the continued use of coin-operated vending machines currently the property of the Division of Services for the Blind of the Department of Human Resources and now part of the vending-stand program. (1973, c. 1280, s. 1.)

Chapter 112.

Confederate Homes and Pensions.

Article 1.

Confederate Woman's Home.

Sec.
112-1. Incorporation and powers of Association.
112-2. [Repealed.]
112-3. Location of Home.
112-4. [Repealed.]
112-5. Reversion of property.
112-6. [Repealed.]

Article 2.

Pensions.

Part 1. Pension Boards.

112-7. State Board; examination of applications.
112-8. State Board to make rules.
112-9. Auditor to transmit lists to clerks of court.
112-10. County board.
112-11. Compensation of members of the county board of pensions.
112-12. Examination and classification by county board; certificate of disability.
112-13. Annual revision of pension roll.

Part 2. Persons Entitled to Pensions; Classification and Amount.

112-14. Persons disabled in militia service; their widows and orphans.
112-15. Blind or maimed Confederate soldiers.
112-16. Helpless or demented widows of Confederate soldiers.
112-17. [Repealed.]
112-18. Classification of pensions for soldiers and widows.
112-19. Certain widows of Confederate soldiers placed on Class B pension roll.
112-20. Persons not entitled to pensions.
112-21. Removal from pension lists of persons eligible for old age assistance.

Part 3. Application for Pensions.

112-22. Forms provided by Auditor.
112-23. Application by person, guardian or receiver.
112-24. Applications by persons not on rolls.
112-25. Time for forwarding certificate; Auditor to issue warrant.
112-26. Subsequent certificate; suggestion of fraud.

Part 4. Payment of Pensions; Warrants.

112-27. Payment of pensions in advance; acknowledgment of receipt of warrants.
112-28. Warrants payable to pensioner or order; endorsement; copy of power of attorney.

Part 5. Funds Provided for Pensions.

112-29. Limit and distribution of appropriation.
112-30. Increase by counties; special tax.

Part 6. Miscellaneous Provisions.

112-31. Officer failing to perform duties.
112-32. Speculation in pension claims a misdemeanor.
112-33. County payment of burial expenses.
112-34. State payment of burial expenses.
112-35. Peddling without license.
112-36. Taking fees for acknowledgments by pensioners.
112-37. Officers required to check roll of pensioners with record of vital statistics.

Article 1.

Confederate Woman's Home.

§ 112-1. Incorporation and powers of Association. — Julian S. Carr, John H. Thorp, Robert H. Ricks, Robert H. Bradley, E. R. Preston, Simon B. Taylor, Joseph F. Spainhour, A. D. McGill, M. Leslie Davis, T. T. Thorne, and W. A. Grier, together with their successors in office, are constituted a body politic and corporate under the name and style of Confederate Woman's Home Association, and by that name may sue and be sued, purchase, hold and sell real and personal property, and have all the powers and enjoy all the privileges of a charitable corporation under the law enabling them to establish, maintain, and govern a home for the deserving wives, daughters and widows of North Carolina Confederate soldiers.

The corporation may solicit and receive donations in money or property for the purpose of obtaining a site on which to erect its buildings, for equipping, furnishing and maintaining them, or for any other purpose whatsoever; and said corporation may invest its funds to constitute an endowment fund. Said

corporation shall have a corporate existence until January 1, 1980. It shall also have the power to solicit and receive donations for the purpose of aiding indigent Confederate women at their homes in the various counties of the State, and shall have all powers necessary to this end. (1913, c. 62, s. 1; C. S., s. 5134; 1949, c. 121; 1953, c. 62; 1959, c. 222; 1969, c. 116.)

State Government Reorganization. — The Confederate Woman's Home Association was transferred to the Department of Human Resources by § 143A-159 (now repealed), enacted by Session Laws 1971, c. 864.

§ 112-2: Repealed by Session Laws 1973, c. 476, s. 166.

Cross Reference. — As to the Board of Directors of the Confederate Women's Home, see §§ 143B-173 through 143B-176.

§ 112-3. Location of Home. — The Department of Human Resources shall locate the Confederate Woman's Home at such place in North Carolina as they shall deem proper, and it shall be located in or near that town or city offering the largest inducement having due regard to the desirability and suitability for the location of the home. (1913, c. 62, s. 2; C. S., s. 5136; 1973, c. 476, s. 166.)

Editor's Note. — The 1973 amendment substituted "Department of Human Resources" for "board of directors."

§ 112-4: Repealed by Session Laws 1973, c. 476, s. 166.

§ 112-5. Reversion of property. — If the land on which the said Home shall be located or used in connection therewith shall at any time cease to be used for that purpose, or for the use and benefit of the dependent wives and widows of the Confederate soldiers as herein specified, or other worthy indigent Confederate women of this State, the same shall revert to the person or persons donating the same, if it has been acquired entirely by donations; otherwise, it shall revert to the State; but in all cases of nonuser for the said purpose, the buildings thereon, the furniture and equipment generally of every nature, shall revert and belong to the State. (1913, c. 62, s. 4; C. S., s. 5138.)

§ 112-6: Repealed by Session Laws 1973, c. 476, s. 166.

ARTICLE 2.

Pensions.

Part 1. Pension Boards.

§ 112-7. State Board; examination of applications. — The Governor, Attorney General, and Auditor shall be constituted a State Board of Pensions, which shall examine each application for a pension, and for this purpose it may take other testimony than that sent by the county boards. Such applications as are approved by the State Board shall be paid by the Treasurer, upon the warrant of the Auditor. (1921, c. 189, s. 1; C. S., s. 5168(a).)

§ 112-8. State Board to make rules. — The State Board of Pensions is empowered to prescribe rules and regulations for the more certainly carrying

into effect this Article according to its true intent and purpose. (1921, c. 189, s. 2; C. S., s. 5168(b).)

§ 112-9. Auditor to transmit lists to clerks of court. — The Auditor shall, as soon as the same is ascertained, transmit to the clerks of the superior court of the several counties a correct list of the pensioners, with their post offices, as allowed by the State Board of Pensions. (1921, c. 189, s. 3; C. S., s. 5168(c); 1929, c. 296, s. 1.)

§ 112-10. County board. — The clerk of the superior court, together with three reputable ex-Confederate soldiers, or sons, or daughters, or grandsons, or granddaughters of ex-Confederate soldiers, to be appointed by the State Auditor, shall constitute a county board of pensions for their county. (1921, c. 189, s. 4; C. S., s. 5168(d); 1929, c. 92, s. 1; 1933, c. 465, s. 1.)

§ 112-11. Compensation of members of the county board of pensions. — Each member of the county board of pensions shall be entitled to two dollars ($2.00) a day, not exceeding three days in any year, when attending the annual meeting of said board, the said compensation to be paid by the county treasurer on the order of the board of county commissioners. (1903, c. 273, s. 19; Rev., s. 2783; C. S., s. 3913.)

§ 112-12. Examination and classification by county board; certificate of disability. — All persons entitled to pensions under this Article, not now drawing pensions, shall appear before the county board of pensions for examination and classification in compliance with the provisions of this Article: Provided, that all such as are unable to attend shall present a certificate from a creditable physician, living and practicing medicine in the community in which the applicant resides, that the applicant is unable to attend. (1921, c. 189, s. 5; C. S., s. 5168(e); Ex. Sess. 1924, c. 106; 1941, c. 152, s. 1.)

§ 112-13. Annual revision of pension roll. — On the first Mondays of February and July of each year the pension board of each county shall revise and purge the pension roll of the county, first giving written notice of 10 days to the pensioner who is alleged not to be rightfully on the State pension roll, to show cause why his name should not be stricken from the pension list, and the board shall meet another day to consider the subject of purging the list. (1921, c. 189, s. 6; C. S., s. 5168(f); Ex. Sess. 1924, c. 106.)

Part 2. Persons Entitled to Pensions; Classification and Amount.

§ 112-14. Persons disabled in militia service; their widows and orphans. — Every person who may have been disabled by wounds in the militia service of the State, or rendered incapable thereby of procuring subsistence for himself and family, and the widows and orphans of such persons who may have died from such wounds, or from disease contracted in such service, shall be entitled to pensions as hereinafter provided for Confederate soldiers. (R. C., c. 84; Code, s. 3472; Rev., s. 4990; C. S., s. 5147.)

§ 112-15. Blind or maimed Confederate soldiers. — All ex-Confederate soldiers and sailors who have become totally blind since the war, or who lost their sight or both hands or feet, or one arm and one leg, in the Confederate service, shall receive four hundred and twenty dollars ($420.00) a year. (1899, c. 619; 1901, c. 332, s. 5; Rev., s. 4991; 1907, c. 60; 1921, c. 189, s. 7; C. S., s. 5168(g); Ex. Sess. 1924, c. 83; 1925, c. 275, s. 6, subsec. 24.)

§ 112-16. Helpless or demented widows of Confederate soldiers. — Every widow of a Confederate soldier who married and was widowed prior to 1866 and who has not remarried and who bore and raised legitimate child or children of

the deceased Confederate soldier, and who has lost her mind, or become helpless, and is not confined in an asylum, or is not an inmate of any charitable institution, shall receive the same pay and in the same manner as blind Confederate soldiers. (1923, c. 3; C. S., s. 5168(h).)

§ 112-17: Repealed by Session Laws 1945, c. 699, s. 2.

§ 112-18. Classification of pensions for soldiers and widows. — There shall be paid out of the treasury of the State, on the warrant of the Auditor, to every person who has been for 12 months immediately preceding his application for pension a bona fide resident of the State, and who is incapacitated for manual labor, and was a soldier or sailor in the service of the Confederate States of America during the War between the States, and to the widow of any deceased officer, soldier, or sailor who was in the service of the Confederate States of America during the War between the States, if such widow was married to such soldier, or sailor, prior to the date set forth in the widow's classification in this section, and if she has married again, is widow at the date of her application, the following sums annually, according to the degree of disability ascertained by the following grades:

Class "A." To all Confederate soldiers not included in G.S. 112-17, who are now disabled from any cause to perform manual labor, twelve hundred dollars ($1200).

Class "B." To such colored servants who went with their masters to the war and can prove their service to the satisfaction of the county and State pension boards, four hundred and fifty-six dollars ($456.00).

Widows

Class "A." To the widows of ex-Confederate soldiers who are blind in both eyes or totally helpless, nine hundred dollars ($900.00).

Class "B." To the widows of ex-Confederate soldiers who were married to such soldiers on or before January 1, 1880, and to such widows who were married to such soldiers subsequent to January 1, 1880, and who are now on the pension rolls, by virtue of previous statutes, four hundred ninety-two dollars ($492.00). Provided, that the State Board of Pensions upon the recommendation of the county pension board, may add to Class B list of pensions such widows of Confederate veterans who were married to the deceased veterans prior to the year 1899 and who are now more than 60 years of age, as in the judgment of the State Board of Pensions are meritorious and deserving, and who from old age or other afflictions are unable to earn their own living. (1921, c. 189, s. 9; Ex. Sess. 1921, c. 89; C. S., s. 5168(j); Ex. Sess. 1924, c. 111; 1927, c. 96, s. 2; 1929, c. 300, s. 1; 1935, c. 46; 1937, c. 318; 1945, c. 699, s. 1; c. 1051, ss. 1-3; 1949, c. 1158, ss. 1-4; 1953, c. 1225; 1957, c. 1395, s. 1.)

Editor's Note. — Section 112-17, referred to above, was repealed by Session Laws 1945, c. 699, s. 2.

§ 112-19. Certain widows of Confederate soldiers placed on Class B pension roll. — All widows of Confederate soldiers who have lived with such soldiers for a period of five years prior to the death of such soldier, or for any period of time if a child was born of said marriage, and where the death of the soldier occurred since the year 1899, shall, upon proper proof of such facts, be placed upon the pension list in Class B, and paid from the pension fund such pensions as are allowed to other widows of Confederate soldiers in Class B: Provided, that no payments shall be made to any widows of Confederate soldiers

as hereinbefore referred to, except and until they shall have qualified for said benefits under and pursuant to the general State pension laws as modified hereby. (1937, cc. 181, 454; 1953, c. 1169; 1959, c. 1004.)

§ 112-20. Persons not entitled to pensions. — No person shall be entitled to receive the benefits of this Article:

(1) Who is an inmate of the Soldiers' Home at Raleigh;
(2) Who is confined in an asylum or county home;
(3) Repealed by Session Laws 1959, c. 181, s. 1;
(4) Who holds a national, State, or county office, which pays annually in salary or fees the sum of three hundred dollars ($300.00);
(5) Who was a deserter, or the widow of such deserter; but no soldier who has been honorably discharged, or who was in service at the surrender shall be considered a deserter in the meaning of this section;
(6) Who is receiving aid from the State under any act providing for the relief of soldiers who are blind or maimed;
(7) Who owns in his own right, or in the right of his wife, property whose tax valuation exceeds two thousand dollars ($2,000), or who, having owned property in excess of two thousand dollars ($2,000), has disposed of the same by gift or voluntary conveyance to his wife, child, next of kin, or to any other person since the eleventh day of March, 1885: Provided, that the county board of pensions may place upon the pension roll, in the classes to which they would otherwise belong, any Confederate soldier, sailor, or widow disqualified by the provisions of this section, who may appear to be unable to earn a living from property valued as much as two thousand dollars ($2,000) or more for taxation, and who may appear to the board from special circumstances worthy to be placed upon the pension roll. (1921, c. 189, s. 10; C. S., s. 5168(k); 1959, c. 181, s. 1.)

Editor's Note. — Section 2 of the act repealing subdivision (3) provides: "It is the intent of this act that any widow of a Confederate soldier, who is qualified to receive a pension from this State under Article 2 of Chapter 112 of the General Statutes, may continue to receive such a pension, even though she is eligible for and receives a pension from any other state or from the United States."

§ 112-21. Removal from pension lists of persons eligible for old age assistance. — All widows of Confederate veterans and all colored servants of Confederate soldiers who are eligible for aid to the aged or disabled under the provisions of Chapter 108 of the General Statutes, from and after the first day of June 1939, shall not be entitled to any pension provided by the provisions of Chapter 112, entitled "Confederate Homes and Pensions," and any acts of the General Assembly amendatory thereof, or by virtue of any special or general law relating to pensions for widows of Confederate veterans or colored servants of Confederate soldiers.

Before the first day of June, 1939, the county board of social services in every county in this State shall make a complete and thorough examination and investigation of all widows of Confederate veterans and all colored servants of Confederate soldiers whose names are on the pension roll in each county, and shall determine the eligibility of such pensioners for aid to the aged or disabled under the provisions of Chapter 108 of the General Statutes without any applications being made by such persons for aid to the aged or disabled as required by said law, and after making such investigation, shall determine the eligibility of such persons for old age assistance and the amount of assistance which any such person is entitled to receive in accordance with the provisions of the Old Age Assistance Act. After such investigations and determinations

have been made, the county board of social services shall notify the county pension board in the county of such county board of social services of the persons who are found to be eligible for old age assistance under the provisions of said law. Upon such certification to the county pension board, the county pension board shall revise the list of pensioners in said county and shall exclude from said list all the widows of Confederate veterans and all colored servants of Confederate soldiers who are certified as being eligible for old age assistance. The county pension board shall, upon receipt of such certification from the county board of social services, and revision of the pension list as aforesaid, notify the State Board of Pensions of the revision of the pension list for said county and the names eliminated therefrom. The county board of social services, in making the aforesaid certification to the county pension board, shall also send a copy thereof to the State Board of Pensions, and such certification from the county board of social services to the State Board of Pensions shall be sufficient authority for removal of such names from the pension list by the State Board of Pensions. If it should thereafter be determined that such person so removed from the pension list was not eligible for old age assistance by the authority administering said law, the award for old age assistance to such person is revoked, the name of such person, if otherwise eligible, shall be restored to the said pension list by the county pension board, and the full pension to which such person would be entitled, if the name had not been withdrawn from said list, shall be paid.

As to all persons found eligible for old age assistance whose names are removed from the pension list as herein required, the amount necessary for payment of awards for old age assistance shall be paid entirely out of State and federal funds.

In the event it is determined by the county board of social services that the awards which such eligible persons are entitled to receive shall be less than the amount paid such persons as pensions, such names shall not be withdrawn from the said pension list, and the county board of social services shall not make any award of old age benefits to such persons.

After the county pension board has revised the list of pensions in each county as herein provided, and after having certified the same to the State Board of Pensions, the State Board of Pensions shall certify the revised list of pensioners to the State Auditor and the State Auditor shall transmit to the clerks of the superior court in the several counties a correct revised list of pensioners, with their post offices, as allowed by the State Board of Pensions. (1937, c. 227; 1939, c. 102; 1969, c. 981, ss. 2, 3; c. 982.)

State Government Reorganization. — The State Board of Pensions was transferred to the Department of State Auditor by § 143A-29, enacted by Session Laws 1971, c. 864.

Part 3. Application for Pensions.

§ 112-22. Forms provided by Auditor. — The Auditor of the State shall provide a form of application (according to the terms of this Article), and have the same printed and sent to the clerks of the superior court of the several counties of the State for use of applicants. (1921, c. 189, s. 11; C. S., s. 5168(l).)

§ 112-23. Application by person, guardian or receiver. — No soldier, officer, sailor, or widow shall be entitled to the benefits of this Chapter except upon his or her own application, or, in case he or she is insane, upon the application of his or her guardian or receiver. (1921, c. 189, s. 12; C. S., s. 5168(m).)

§ 112-24. Applications by persons not on rolls. — Before any officer, soldier, or sailor, not now receiving a pension, shall receive any part of the annual appropriation made for pensions he shall, on or before the first Monday

in July of every year, file with the superior court clerk of the county wherein he resides an application for relief, setting forth in detail the company and regiment or battalion in which he served at the time of receiving the wound; the time and place of receiving the wound; whether he is holding an office in the State, United States, or county from which he is receiving the sum of three hundred dollars ($300.00) in fees or salary; whether he is worth in his own right or in the right of his wife, property at its assessed value for taxation to the amount of two thousand dollars ($2,000); whether he is receiving any aid from the State of North Carolina under any other statute providing for the relief of the maimed and blind soldiers of the State; and whether he is a citizen of the State of North Carolina. Such application shall be verified by the oath of the applicant made before anyone empowered to administer oaths, and shall be accompanied by the affidavit of one or more credible witnesses, stating that he or they verily believe the applicant to be the identical person named in the application, and that the facts stated in the application are true; and when the county board of pensions is satisfied with the justice of the claim made by the applicant they shall so certify the same to the Auditor of the State under their hands and the seal of the superior court of their county, which shall be impressed by the clerk of the superior court of the county; and there shall accompany the certificate so sent to the Auditor the application, affidavit, and proofs taken by them, which papers shall be kept on file in the Auditor's office. Clerks of the superior courts shall receive no fees whatsoever for services herein required of them. (1921, c. 189, s. 13; C. S., s. 5168(n).)

§ 112-25. Time for forwarding certificate; Auditor to issue warrant. — It shall be the duty of the clerk of the superior court of the county where the application is filed to forward to the Auditor of the State, immediately after the certificate required by G.S. 112-24 is made and before the first Monday in August in each year, the application and proofs and certificates, and upon the State Board of Pensions being satisfied of the truth and genuineness of the application, the Auditor shall issue his warrant on the State Treasurer for the same. (1921, c. 189, s. 14; C. S., s. 5168(o).)

§ 112-26. Subsequent certificate; suggestion of fraud. — After an application has once been passed upon and allowed by the county and State boards, it shall be necessary only for the applicant to file with the Auditor of State a certificate from the clerk of the superior court of the county in which the application was originally filed, setting forth that the applicant is the identical person named in the original application which is on file in the Auditor's office, and that the applicant is alive, but still disabled, and a citizen of this State, and still entitled to the benefits of this Article, which certificate may be passed upon by the State Board, upon suggestions of fraud, before the Auditor draws his warrant upon such certificate. (1921, c. 189, s. 15; C. S., s. 5168(p).)

Part 4. Payment of Pensions; Warrants.

§ 112-27. Payment of pensions in advance; acknowledgment of receipt of warrants. — Pensions are payable monthly in advance, and the State Auditor shall divide into 12 equal installments the yearly amount due each pensioner and shall transmit to the clerks of the superior court of the various counties warrants for the same on or before the first day of each calendar month, the installment then due. It shall be the duty of the clerk of the superior court to acknowledge to the Auditor the receipt of such warrants by the next mail after their receipt, to deliver or mail forthwith to each pensioner in his county his warrant, and to post in the courthouse a list of the pensioners to whom he has mailed or delivered warrants. (1921, c. 189, s. 16; C. S., s. 5168(q); 1939, c. 187, s. 1.)

Installments of a pension payable in the future are not assignable. Gill v. Dixon, 131 N.C. 87, 42 S.E. 538 (1902).

§ 112-28. Warrants payable to pensioner or order; endorsement; copy of power of attorney. — The Auditor shall issue his warrant payable to the pensioner, or order, and such warrants shall not be paid by the Treasurer without the endorsement of the payee or his duly appointed attorney-in-fact, specially authorized to make such endorsement; and if such endorsement is made by the attorney-in-fact of the payee, a copy of the power of attorney, duly attested by the clerk of the superior court or notary public of the county in which the payee resides shall be attached to the warrant. (1921, c. 189, s. 17; C. S., s. 5168(r); 1941, c. 152, s. 3; 1973, c. 108, s. 63.)

Editor's Note. — The 1973 amendment deleted "or a justice of the peace" following "superior court" near the end of the section.

Part 5. Funds Provided for Pensions.

§ 112-29. Limit and distribution of appropriation. — The State Auditor is authorized, empowered and directed to apportion, distribute and divide the money appropriated by the State for pensions, and to issue warrants to the several pensioners pro rata in their respective grades: Provided, that if the money appropriated by the General Assembly for the Confederate soldiers, widows and servants is more than enough to pay them the amounts mentioned in this Chapter, or if for any other cause, after paying the Confederate soldiers, widows and servants the amount stipulated in their respective grades as set out in this Chapter, there should be an excess of the money appropriated for the first year, then the balance in the fund so appropriated for the first year shall revert and supplement the fund appropriated for the second year of the biennium: Provided, further, that if any moneys herein appropriated for the purposes aforesaid shall not be needed to pay the Confederate soldiers, widows and servants the amounts stipulated in their respective grades, then such moneys shall be paid by the State Board of Pensions into the treasury and become a part of the general fund appropriated by the State for other purposes: Provided, that no greater amount shall be paid out under this Chapter than is appropriated under the General Appropriation Maintenance Act. (1921, c. 189, s. 20; C. S., s. 5168(u); 1927, c. 96, s. 4.)

Legislative Right. — It is the exclusive right of the legislature to determine and declare by whom and how the indigent of the State entitled to support shall be ascertained and from what fund and by whom allowances for their support shall be made. Board of Educ. v. Commissioners of Bladen, 113 N.C. 379, 18 S.E. 661 (1893).

§ 112-30. Increase by counties; special tax. — The county commissioners of each county in the State are authorized and empowered, if in their discretion such levy is deemed advisable, to levy for each year, at the same time and in the same manner as the levy of other county taxes, a special tax not exceeding two cents (2¢) on the hundred dollars' ($100.00) valuation of property and six cents on each taxable poll for the purpose of increasing the pensions of Confederate soldiers and widows.

Such tax shall be collected and accounted for by the sheriff or other tax collector in the same manner and under the same penalties as other taxes levied for the county, and the net proceeds thereof shall be applied each year to

increase pro rata the pensions of such persons as stand upon the Confederate pension roll of the county for the year in which the tax is levied.

The amount collected under this section shall be disbursed by the county commissioners pro rata to the various pensioners in such county as shown by the State pension list for that county. (1921, c. 189, s. 21; C. S., s. 5168(v).)

Local Modification. — Cumberland: 1907, c. 555.

Constitutionality. — Whether this section be regarded as general or special, it met the requirements of former N.C. Const., Art. V, § 6, and its efficacy is not impaired by such section of the Constitution. Brown v. Jennings, 188 N.C. 155, 124 S.E. 150 (1924).

Part 6. Miscellaneous Provisions.

§ 112-31. Officer failing to perform duties. — Any officer or other person who shall neglect or refuse to discharge the duties imposed upon him by this Article shall be guilty of a misdemeanor, and upon conviction thereof in the superior court shall be fined or imprisoned at the discretion of the court. (1921, c. 189, s. 22; C. S., s. 5168(w).)

§ 112-32. Speculation in pension claims a misdemeanor. — Any person who shall speculate or purchase for a less sum than that to which each may be entitled the claims of any soldier or sailor or widow of a deceased soldier or sailor, allowed under the provisions of this Article, shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned, or both in the discretion of the court. (1921, c. 189, s. 23; C. S., s. 5168(x).)

Installments of a pension payable in the future are not assignable. Gill v. Dixon, 131 N.C. 87, 42 S.E. 538 (1902).

§ 112-33. County payment of burial expenses. — Whenever in any county of this State a Confederate pensioner on the pension roll of the county or the widow of a Confederate soldier shall die, it shall be the duty of the board of commissioners of such county, upon the certificate of such fact by the clerk of the superior court and recommendation of the chairman of the pension board of the county, to order the payment out of the general fund of the county of a sum not exceeding thirty dollars ($30.00), to be applied toward defraying the burial expenses of such deceased pensioner or widow. (1921, c. 189, s. 24; C. S., s. 5168(y).)

Residence of Pensioner Immaterial. — This section requires the amount stated to be paid by the board of commissioners of the county on the pension roll of which the name of the pensioner appears, irrespective of residence. Hannah v. Board of Comm'rs, 176 N.C. 395, 97 S.E. 160 (1918).

§ 112-34. State payment of burial expenses. — Whenever in any county of this State a Confederate pensioner on the pension roll shall die, and such fact has been determined by the State Auditor, the State Auditor shall forward to the clerk of the superior court of the county in which such pensioner resided a State warrant in the amount of one hundred fifty dollars ($150.00), to be paid by the clerk of the superior court of the county in which such pensioner resided to the personal representative, or next of kin of such deceased pensioner to be applied toward defraying the funeral expenses of such deceased pensioner: Provided, that this section shall also apply to pensioners transferred to old age assistance under the provisions of G.S. 112-21: Provided further, that this section shall apply to persons who otherwise would be entitled to pensions but who are

not on pension roll at time of death because of being admitted to county home, county institution or State institution. (1939, c. 187, s. 2; 1941, c. 152, s. 4; 1949, c. 1018; 1957, c. 1395, s. 2.)

§ 112-35. Peddling without license. — All ex-Confederate soldiers who are without means of support other than their manual labor, and who are incapacitated to perform manual labor for any reason other than by their vicious habits, and now citizens of this State, shall be allowed to peddle drugs, goods, wares, and merchandise in any of the counties of this State without a license therefor. Before any soldier shall be entitled to the benefits of this section he shall make application to the county board of pensioners of the county of which he is a resident, and show to the satisfaction of the county board of pensions that he is entitled to the same by having served in the Confederate army or navy during the War between the States, and that he is incapacitated to perform manual labor, and does not own property the tax valuation of which exceeds the sum of two thousand dollars ($2,000) in his own name or in the name of his wife, deeded to her by him since the first day of March, 1902. (1921, c. 189, s. 25; C. S., s. 5168(z).)

Cross Reference. — As to exemption from jury duty, see § 9-19.

Quoted in Eastern Carolina Tastee-Freez, Inc. v. City of Raleigh, 256 N.C. 208, 123 S.E.2d 632 (1962).

§ 112-36. Taking fees for acknowledgments by pensioners. — It shall be unlawful for any clerk of the superior court, notary public or any magistrate to charge any Confederate pensioner or the widow of such Confederate pensioner receiving a pension from the State of North Carolina for taking acknowledgments in connection with pension papers.

Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction shall be fined not more than fifty dollars ($50.00) or imprisoned not more than 30 days. (1925, c. 68.)

§ 112-37. Officers required to check roll of pensioners with record of vital statistics. — It shall be the duty of the register of deeds and the clerk of the court of each county in the State of North Carolina to check the roll of pensioners furnished the clerks of the court of the various counties of the State, with the record of vital statistics in the office of the register of deeds, within 10 days after receipt of the pension roll, which roll shall be furnished by the State Auditor on or before October 15 and April 15 of each year, and certify under their hands and seals of their office, the names of all deceased pensioners with dates of their death, whose names appear upon the pension roll, to the State Auditor. The State Auditor at the time of furnishing the pension rolls to the register of deeds and clerk of the superior court of each county, as herein provided, shall also furnish copies of said pension rolls to the State Registrar of Vital Statistics, who shall cause the same to be checked against the vital statistics records in his office and certify to the State Auditor the names of all persons appearing on said pension rolls, which the records in his office show to be deceased, together with the dates of their death. (1931, c. 144.)

Chapter 113.

Conservation and Development.

SUBCHAPTER I. GENERAL PROVISIONS.

Article 1.

Powers and Duties of Department of Natural and Economic Resources Generally.

Sec.
113-1. Meaning of terms.
113-2. [Repealed.]
113-3. Duties of the Department.
113-4 to 113-7. [Repealed.]
113-8. Powers and duties of the Department of Natural and Economic Resources.
113-8.1 to 113-13. [Repealed.]
113-14. Publications.
113-14.1. Promotion of seashore industry and recreation.
113-14.2. [Repealed.]
113-15. Advertising of State resources and advantages.
113-15.1. [Repealed.]
113-15.2. Investigation of impact of proposed new and expanding industry.
113-16. Cooperation with agencies of the federal government.
113-17. Agreements, negotiations and conferences with federal government.
113-18. Department authorized to receive funds from Federal Power Commission.
113-19. Cooperation with other State departments.
113-20. Cooperation with counties and municipal corporations.
113-21. Cooperation of counties with State in making water resource survey.
113-22. Control of State forests.
113-23. Control of Mount Mitchell Park and other State parks.
113-24. Protection of waterfowl food growing in public waters.
113-25. Notice to Department before beginning business of manufacturing products from mineral resources of State.
113-26. [Repealed.]
113-26.1. Bureau of Mines; mineral museum.
113-27. [Repealed.]
113-28. Reimbursement of government for expense of emergency conservation work.

Article 1A.

Special Peace Officers.

113-28.1. Designated employees commissioned special peace officers by Governor.
113-28.2. Powers of arrest.
Sec.
113-28.3. Bond required.
113-28.4. Oaths required.

Article 1B.

Aviation.

113-28.5. Legislative intent.
113-28.6. Designation of administering agency.
113-28.7. Activities eligible for State aid.
113-28.8. Limitations on State financial aid.
113-28,9. Sources of State funds.
113-28.10. Acceptance, receipt, accounting, and expenditure of State and federal funds.
113-28.11. Receipt of federal grants.
113-28.12. Acquisition of land by Department.

Article 1C.

Commission on International Cooperation.

113-28.13 to 113-28.16. [Repealed.]

SUBCHAPTER II. STATE FORESTS AND PARKS.

Article 2.

Acquisition and Control of State Forests and Parks.

113-29. Policy and plan to be inaugurated by Department of Natural and Economic Resources.
113-29.1. Growing of timber on unused State lands authorized.
113-30. Use of lands acquired by counties through tax foreclosures as demonstration forests.
113-31. Procedure for acquisition of delinquent tax lands from counties.
113-32. Purchase of lands for use as demonstration forests.
113-33. Forest management appropriation.
113-34. Power to acquire lands as State forests, parks, etc.; donations or leases by United States; leases for recreational purposes; rules governing public use.
113-35. State timber may be sold by Department of Natural and Economic Resources; forest nurseries; control over parks, etc.; operation of public service facilities; concessions to private concerns.
113-36. Application of proceeds from sale of products.
113-37. Legislative authority necessary for payment.
113-38. Distribution of funds from sale of forestlands.
113-39. License fees for hunting and fishing on government-owned property unaffected.

Sec.
113-40. Donations of property for forestry or park purposes; agreements with federal government or agencies for acquisition.
113-41. Expenditure of funds for development, etc.; disposition of products from lands; rules and regulations.
113-42. Disposition of revenues received from lands acquired.
113-43. State not obligated for debts created hereunder.
113-44. Disposition of lands acquired.

Article 2A.

Forestry Advisory Committee.

113-44.1, 113-44.2. [Repealed.]

Article 3.

Private Lands Designated as State Forests.

113-45. Governor may designate State forests.
113-46. Publication of declaration.
113-47. Duty of the landowners.
113-48. Forest rangers appointed.
113-49. Powers of State forest rangers.
113-50. Fines imposed.

Article 4.

Protection and Development of Forests; Fire Control.

113-51. Powers of Department of Natural and Economic Resources.
113-52. Forest rangers.
113-53. [Repealed.]
113-54. Duties of forest rangers; payment of expenses by State and counties.
113-55. Powers of forest rangers to prevent and extinguish fires.
113-56. Compensation of forest rangers.
113-57. Woodland defined.
113-58. Misdemeanor to destroy posted forestry notice.
113-59. Cooperation between counties and State in forest protection and development.
113-60. Instructions on forest preservation and development.
113-60.1. Authority of Governor to close forests and woodlands to hunting, fishing and trapping.
113-60.2. Publication of proclamation; annulment thereof.
113-60.3. Violation of proclamation a misdemeanor.

Article 4A.

Protection of Forest against Insect Infestation and Disease.

113-60.4. Purpose and intent.
113-60.5. Authority of the Department of Natural and Economic Resources.
113-60.6. Definitions.
113-60.7. Action against insects and diseases.
113-60.8. Authority of Secretary of Natural and Economic Resources and his agents to go upon private land within control zones.
113-60.9. Cooperative agreements.
113-60.10. Annulment of control zone.

Article 4B.

Southeastern Interstate Forest Fire Protection Compact.

113-60.11. Execution of Compact authorized; terms of Compact.
113-60.12. When Compact to become effective; authority of Governor.
113-60.13. Assent of legislature to mutual aid provisions of other compacts.
113-60.14. Compact Administrator; North Carolina members of advisory committee.
113-60.15. Agreements with noncompact states.

Article 5.

Corporations for Protection and Development of Forests.

113-61. Private limited dividend corporations may be formed.
113-62. Manner of organizing.
113-63. Directors.
113-64. Duties of supervision by Secretary of Natural and Economic Resources.
113-65. Powers of Secretary.
113-66. Provision for appeal by corporations to Governor.
113-67. Limitations as to dividends.
113-68. Issuance of securities restricted.
113-69. Limitation on bounties to stockholders.
113-70. Earnings above dividend requirements payable to State.
113-71. Dissolution of corporation.
113-72. Cutting and sale of timber.
113-73. Corporation may not sell or convey without consent of Secretary, or pay higher interest rate than 6%.
113-74. Power to borrow money limited.
113-75. Secretary to approve development of forests.
113-76. Application of corporate income.
113-77. Reorganization of corporations.

Article 6.

Fishing Generally.

113-78. Fishing in lakes partially in another state.
113-79 to 113-81. [Repealed.]

Article 6A.

Forestry Services and Advice for Owners and Operators of Forestland.

Sec.
113-81.1. Authority to render scientific forestry services.
113-81.2. Services under direction of Secretary of Natural and Economic Resources; compensation; when services without charge.
113-81.3. Deposit of receipts with State treasury.

SUBCHAPTER IIA. DISTRIBUTION AND SALE OF HUNTING, FISHING AND TRAPPING LICENSES.

Article 6B.

License Agents.

113-81.4. Purpose of Article.
113-81.5. Definitions.
113-81.6. Duty of Wildlife Resources Commission.
113-81.7. Authority of the Commission.
113-81.8. Duties of Executive Director of Wildlife Resources Commission.
113-81.9. Qualifications of license agents.
113-81.10. Bond required of agents.
113-81.11. Duties of license agents.
113-81.12. Penalties; dismissal of agents.
113-81.13. Repealer.

SUBCHAPTER III. GAME LAWS.

Article 7.

North Carolina Game Law of 1935.

113-82. Title of Article.
113-83. Definitions.
113-84. Powers and duties of the Wildlife Resources Commission.
113-85. Limitations on powers.
113-86. Organization of work.
113-87. Permits to kill game injurious to agriculture.
113-88. Publication of rules and regulations of Wildlife Resources Commission.
113-89. County game commissions.
113-90. Appointment of Commissioner; salary; expenses; bond; office.
113-91. Powers of Executive Director of the North Carolina Wildlife Resources Commission.
113-92. Officers constituted deputy game protectors.
113-93. Protectors, deputy protectors, and refuge keepers constituted special forest wardens.
113-94. Payment to State Treasurer of license fees.
113-95. Licenses required.
113-95.1. Licenses for members of armed forces.
113-95.2. Special big-game hunting license.
113-95.3. Licenses for disabled veterans.
113-95.4. Report to Wildlife Resources Commission required upon killing of bear, wild turkey or antlerless deer.
113-96. Trappers' licenses.
113-96.1. Schedule of licenses.
113-97. Term and use of license.
113-98. Exemption.
113-99. Disposition of license fees.
113-100. Open season.
113-101. Bag limits.
113-102. Protected and unprotected game.
113-103. Unlawful possession.
113-103.1. Deer accidentally killed.
113-104. Manner of taking game.
113-105. License to engage in business of game propagation; sale and transportation regulated.
113-105.1. Possession, sale and transportation of certain ring-necked pheasants and chukar partridges legalized.
113-105.2. Pen-raised quail.
113-106. Unlawful transportation.
113-107. Marking packages in which game transported.
113-108. Privately owned public hunting grounds.
113-109. Punishment for violation of Article.
113-109.1 to 113-109.5. [Reserved.]

Article 7A.

Safe Distances for Hunting Migratory Wild Waterfowl.

113-109.6. Hunting migratory wild waterfowl in the vicinity of another waterfowl blind.
113-109.7. Penalty for violation.
113-109.8. Article inapplicable to certain counties.

Article 8.

Fox-Hunting Regulations.

113-110. [Repealed.]
113-110.1. Persons required to have fox-hunting licenses.
113-111. No closed season in certain counties.
113-112. Police power of protectors in enforcing county laws relative to foxes.

Article 9.

Federal Regulations on Federal Lands.

113-113. Legislative consent; violation made a misdemeanor.

Article 10.

Regulation of Fur Dealers; Licenses.

113-114. Fur dealer's license; fees.
113-115. Annual report of furs bought.

Sec.
113-116. What counties may levy tax.
113-117. Permits may be issued to nonresident dealers.
113-118. Licenses for each employee of dealer; fees; residence requirement.
113-119. Nonresident buying furs personally or through agent classed as nonresident fur dealer.
113-120. Violation a misdemeanor.

Article 10A.

Trespassing upon "Posted" Property to Hunt, Fish or Trap.

113-120.1. Trespass for purposes of hunting, etc., without written consent a misdemeanor.
113-120.2. Regulations as to posting of property.
113-120.3. Mutilation, etc., of "posted" signs; posting signs without consent of owner or agent.
113-120.4. Entrance on navigable waters, etc., for purpose of fishing, hunting or trapping not prohibited.

Article 10B.

Liability of Landowners to Authorized Users.

113-120.5. Liability of persons allowing others to use premises for certain purposes limited.
113-120.6. What liability not affected.
113-120.7. Meaning of "premises."

Article 11.

Miscellaneous Provisions.

113-121. Possession of firearm silencer, while hunting game, made unlawful.
113-122. Sanctuary on Grandfather Mountain; molestation of game a misdemeanor.
113-123. Assent of State to act of Congress providing for aid in wildlife restoration projects.
113-124. Birds kept as pets or for breeding.
113-125. Bird dogs running at large in certain counties.
113-126. Deer; fire hunting; compelling testimony.
113-126.1. Killing bear out of season.

SUBCHAPTER IV. CONSERVATION OF FISHERIES RESOURCES.

Article 12.

General Definitions.

113-127. Application of Article.
113-128. Definitions relating to agencies and their powers.
113-129. Definitions relating to resources.
113-130. Definitions relating to activities of public.

Article 13.

Jurisdiction of Fisheries Agencies.

113-131. Resources belong to public; stewardship of conservation agencies.
113-132. Jurisdiction of fisheries agencies.
113-133. Abolition of local coastal fishing laws.
113-134. Regulations.
113-134.1. Jurisdiction over marine resources in Atlantic Ocean.
113-135. General penalty for violating Subchapter or regulations.
113-136. Enforcement authority of inspectors and protectors; refusal to obey or allow inspection by inspectors and protectors.
113-137. Search on arrest; seizure and confiscation of property; disposition of confiscated property.
113-138. Enforcement jurisdiction of special officers.
113-139. Search warrants.
113-140 to 113-150. [Reserved.]

Article 14.

Commercial and Sports Fisheries Licenses and Taxes.

113-151. Regulations of Marine Fisheries Commission.
113-151.1. License agents.
113-152. Licensing of vessels; fees.
113-153. Vessels fishing beyond territorial waters.
113-154. Oyster and clam licenses.
113-155. Licenses to land and sell fish.
113-155.1. Commercial fishermen; identification.
113-156. Licenses for fish dealers.
113-157. Taxes on seafood.
113-158. Transplanting or holding seafood; when seafood taxes due; permits to transplant oysters or clams.
113-159. [Repealed.]
113-160. Exportation and importation of fish and equipment.
113-161. Reciprocal agreements.
113-162. Fraud or deception as to licenses, taxes or records.
113-163. Record-keeping requirements.
113-164. Regulations as to possession, transportation and disposition of seafood.
113-165. Violations with respect to taxable seafood and coastal fisheries products.
113-166. Suspension, revocation and reissuance of licenses.
113-167 to 113-180. [Reserved.]

Article 15.

Regulation of Coastal Fisheries.

Sec.

113-181. Duties and powers of Department.
113-182. Regulation of fishing and fisheries.
113-183. Unlawful possession, transportation and sale of fish.
113-184. Possession and transportation of prohibited oyster equipment.
113-185. Fishing near ocean piers; trash or scrap fishing.
113-186. Measures for fish scrap and oil.
113-187. Penalties for violations of Article and regulations.
113-188. Additional regulations authorized.
113-189. Protection of sea turtles and porpoises.
113-190 to 113-200. [Reserved.]

Article 16.

Cultivation of Oysters and Clams.

113-201. Authority of Marine Fisheries Commission.
113-202. New leases and renewal leases of oyster and clam bottoms; termination of leases issued prior to January 1, 1966.
113-203. Transplanting of oysters and clams.
113-204. Propagation of shellfish.
113-205. Registration of grants in navigable waters; exercise of private fishery rights.
113-206. Chart of grants, leases and fishery rights; overlapping leases and rights; contest or condemnation of claims; damages for taking of property.
113-207 to 113-220. [Reserved.]

Article 17.

Administrative Provisions; Regulatory Authority of Marine Fisheries Commission and Department.

113-221. Filing, codification and publication of regulations; effective date of regulations; proclamations suspending or implementing regulations; presumption of publication; judicial notice of codifications; Secretary's certificates as evidence.
113-222. Arrest, service of process and witness fees of inspectors.
113-223. Reciprocal agreements by Department of Natural and Economic Resources generally.
113-224. Cooperative agreements by Department of Natural and Economic Resources.
113-225. Inspectors not to have financial interest in fisheries.
113-226. Administrative authority of Department of Natural and Economic Resources; administration of funds; delegation of powers.
113-227. [Repealed.]
113-228. Adoption of federal regulations.
113-229. Permits to dredge or fill in or about estuarine waters or state-owned lakes.
113-230. Orders to control activities in coastal wetlands.
113-231 to 113-240. [Reserved.]

Article 18.

Commercial and Sports Fisheries Advisory Board.

113-241 to 113-245. [Repealed.]
113-246 to 113-250. [Reserved.]

Article 19.

Marine Fisheries Compact and Commission.

113-251. Definition of terms.
113-252. Atlantic States Marine Fisheries Compact and Commission.
113-253. Amendment to Compact to establish joint regulation of specific fisheries.
113-254. North Carolina members of Commission.
113-255. Powers of Commission and commissioners.
113-256. Powers herein granted to Commission are supplemental.
113-257. Report of Commission to Governor and legislature; recommendations for legislative action; examination of accounts and books by Auditor.
113-258. Commission subject to provisions of Executive Budget Act.
113-259, 113-260. [Reserved.]

Article 20.

Miscellaneous Regulatory Provisions.

113-261. Taking fish for scientific purposes; cultural and scientific operations.
113-262. Taking by poisons, drugs, explosives or electricity prohibited; exceptions; possession of illegally killed fish as evidence.
113-263. Inspecting plans and specifications of dams.
113-264. Regulatory power over property of agency.
113-265. Obstructing or polluting flow of water into hatchery; throwing fish offal into waters; robbing or injuring nets, seines, buoys, etc.
113-266 to 113-270. [Reserved.]

Article 21.

Inland Fishing Licenses.

Sec.
113-271. Hook-and-line licenses in inland fishing waters.
113-272. Special trout licenses.
113-273. Licenses for propagation and sale of fish.
113-274. Permits.
113-275. General provisions respecting licenses.
113-276. Members of armed forces deemed residents; exemptions and exceptions.
113-277. Suspension and revocation of licenses or permits.
113-278 to 113-290. [Reserved.]

Article 22.

Regulation of Inland Fisheries.

113-291. General restrictions.
113-292. Authority of Wildlife Resources Commission in regulation of inland fishing.
113-293. Regulation of floats and number of lines; obstructing rivers or creeks; keeping open fishways in dams.
113-294. Penalties for unlawfully selling or buying game fish.
113-295 to 113-300. [Reserved.]

Article 23.

Administrative Provisions; Regulatory Authority of Wildlife Resources Commission.

113-301. Filing and publication of regulations.
113-302. Prima facie evidence from unlawful possession of game fish.
113-303. Arrest, service of process and witness fees of protectors.
113-304. Reciprocal agreements by Wildlife Resources Commission.
113-305. Cooperative agreements by Wildlife Resources Commission.
113-306. Administrative authority of Wildlife Resources Commission; disposition of license funds; delegation of powers.
113-307. Adoption of federal laws and regulations.

Article 23A.

Promotion of Coastal Fisheries and Seafood Industry.

113-308. Definitions.
113-309. Declaration of policy.
113-310. Certain activities not to be deemed illegal or in restraint of trade.
113-311. Referendum and assessment declared to be in public interest.
113-312. Application to Marine Fisheries Commission for authority to conduct referendum.
113-313. Action of Marine Fisheries Commission on application.
113-314. Agency to determine time and place of referendum, amount and basis of assessment, etc.; notice of referendum.
113-315. Maximum assessment.
113-315.1. Arrangements for and management of referendum; expenses.
113-315.2. Referendum may be by mail ballot or box ballot; who may vote.
113-315.3. Preparation and distribution of ballots; conduct of referendum; canvass and declaration of results.
113-315.4. Levy and collection of assessment; use of proceeds and other funds.
113-315.5. Alternative method for collection of assessment.
113-315.6. Subsequent referendum where assessment defeated.
113-315.7. Subsequent referendum where assessment adopted.
113-315.8. Refund of assessment; refusal to pay assessment.
113-315.9. Bond of financial officer; audit.
113-315.10 to 113-315.14. [Reserved.]

Article 23B.

Fishermen's Economic Development Program.

113-315.15. Short title.
113-315.16. Legislative findings.
113-315.17. Definitions.
113-315.18. Fishermen's Economic Development Program.
113-315.19. Personnel needs.

Article 24.

Miscellaneous Transitional Provisions.

113-316. General statement of purpose and effect of revision of Subchapter IV.
113-317. Effect of revision on powers of Department of Natural and Economic Resources and Wildlife Resources Commission.
113-318 to 113-320. [Repealed.]
113-321. Retention of boundary line between inland and commercial fishing waters; application of provisions as to commercial fishing waters to coastal fishing waters; regulation of fishing in joint fishing waters.
113-322. River designated as commercial fishing water.
113-323 to 113-377. [Reserved.]

Article 25.

[Reserved.]

Article 26.

113-377.1 to 113-377.7. [Transferred.]

SUBCHAPTER IVA. REPEALS.

Article 26A.

Repeal of Acts.

Sec.
113-377.8. Repeal of certain public, public-local, special and private acts.

SUBCHAPTER V. OIL AND GAS CONSERVATION.

Article 27.

Oil and Gas Conservation.

Part 1. General Provisions.

113-378. Persons drilling for oil or gas to register and furnish bond.
113-379. Filing log of drilling and development of each well.
113-380. Violation a misdemeanor.

Part 2. The Oil and Gas Conservation Act.

113-381. Title.
113-382. Declaration of policy.
113-383 to 113-386. [Repealed.]
113-387. Production of crude oil and gas regulated; tax assessments.
113-388. Collection of assessments.
113-389. Definitions.
113-390. Waste prohibited.
113-391. Jurisdiction and authority of Department of Natural and Economic Resources; rules, regulations and orders.
113-392. Protecting pool owners; drilling units in pools; location of wells; shares in pools.
113-393. Development of lands as drilling unit by agreement or order of Department.
113-394. Limitations on production; allocating and prorating "allowables."
113-395. Notice and payment of fee to Department before drilling or abandoning well; plugging abandoned well.
113-396. Wells to be kept under control.
113-397. Hearing before Department; notice; rules, regulations or orders; public records and copies as evidence.
113-398. Procedure and powers in hearings by Department.
113-399. Suits by Department.
113-400. Assessing costs of hearings.
113-401. Party to hearings; review.
113-402. Rehearings.
113-403. Application for court review; copy served on director who shall notify parties.
113-404. Transcript transmitted to clerk of superior court; scope of review; procedure in superior court and appellate division.
113-405. Introduction of new or additional evidence in superior court; hearing of additional material evidence by Department.
113-406. Effect of pendency of review; stay of proceedings.
113-407. Stay bond.
113-408. Enjoining violation of laws and regulations; service of process; application for drilling well to include residence address of applicant.
113-409. Punishment for making false entries, etc.
113-410. Penalties for other violations.
113-411. Dealing in or handling of illegal oil, gas or product prohibited.
113-412. Seizure and sale of contraband oil, gas and product.
113-413. Funds for administration.
113-414. Filing list of renewed leases in office of register of deeds.
113-415. Conflicting laws.

SUBCHAPTER VI. WELL DRILLING.

Article 28.

Drillers Using Power Machinery.

113-416 to 113-419. [Repealed.]

SUBCHAPTER I. GENERAL PROVISIONS.

ARTICLE 1.

Powers and Duties of Department of Natural and Economic Resources Generally.

§ 113-1. Meaning of terms. — In this Article, unless the context otherwise requires, the expression "Department" means the Department of Natural and Economic Resources; "Secretary" means the Secretary of Natural and Economic Resources. (1925, c. 122, s. 3; 1973, c. 1262, ss. 28, 86.)

Cross References. — As to the organization of the Department of Natural and Economic Resources, see §§ 143B-275 through 143B-279. As to the Board of Natural and Economic Resources, see § 143B-280. As to the Environmental Management Commission, see §§ 143B-282 through 143B-285.

Editor's Note. — The 1973 amendment rewrote this section.

State Government Reorganization. — The Department and Board of Conservation and Development were transferred to the Department of Natural and Economic Resources by former § 143A-117, enacted by Session Laws 1971, c. 864.

§ 113-2: Repealed by Session Laws 1973, c. 1262, s. 28.

§ 113-3. Duties of the Department. — (a) It shall be the duty of the Department, by investigation, recommendation and publication, to aid:

(1) In the promotion of the conservation and development of the natural resources of the State;

(2) In promoting a more profitable use of lands and forests;

(3) In promoting the development of commerce and industry;

(4) In coordinating existing scientific investigations and other related agencies in formulating and promoting sound policies of conservation and development; and

(5) To collect and classify the facts derived from such investigations and from other agencies of the State as a source of information easily accessible to the citizens of the State and to the public generally, setting forth the natural, economic, industrial and commercial advantages of the State.

(b) Repealed by Session Laws 1959, c. 779, s. 3. (1925, c. 122, s. 4; 1957, c. 753, s. 3; c. 1424, s. 1; 1959, c. 779, s. 3.)

Cross Reference. — As to Wildlife Resources Law, see § 143-237 et seq.

Cited in North Carolina State Ports Auth. v. First-Citizens Bank & Trust Co., 242 N.C. 416, 88 S.E.2d 109 (1955).

§§ 113-4 to 113-7: Repealed by Session Laws 1973, c. 1262, s. 28.

§ 113-8. Powers and duties of the Department of Natural and Economic Resources. — The Department of Natural and Economic Resources shall make investigations of the natural, industrial and commercial resources of the State, and take such measures as it may deem best suited to promote the conservation and development of such resources.

It shall have charge of the work of forest maintenance, forest fire prevention, reforestation, and the protection of lands and water supplies by the preservation of forests; it shall also have the care of State forests and parks, and other recreational areas now owned or to be acquired by the State, including the lakes referred to in G.S. 146-7.

It shall make such examination, survey and mapping of the geology, mineralogy and topography of the State, including their industrial and economic utilization, as it may consider necessary; make investigations of water supplies and water powers, prepare and maintain a general inventory of the water resources of the State, and take such measures as it may consider necessary to promote their development.

It shall have the duty of enforcing all laws relating to the conservation of marine and estuarine resources.

It shall make investigations of the existing conditions of trade, commerce and industry in the State, with the causes which may hinder or encourage their growth, and may devise and recommend such plans as may be considered best suited to promote the development of these interests.

The Department of Natural and Economic Resources may take such other measures as it may deem advisable to obtain and make public a more complete knowledge of the State and its resources, and it is authorized to cooperate with

other departments and agencies of the State in obtaining and making public such information.

It shall be the duty of the Department of Natural and Economic Resources to arrange and classify the facts derived from the investigations made, so as to provide a general source of information in regard to the State, its advantages and resources.

The Department of Natural and Economic Resources may acquire such real and personal property as may be found desirable and necessary for the performance of the duties and functions of the Department and pay for same out of any funds appropriated for the Department or available unappropriated revenues of the Department, when such acquisition is approved by the Governor and Council of State. The title to any real estate acquired shall be in the name of the State of North Carolina for the use and benefit of the Department. (1925, c. 122, s. 9; 1927, c. 57; 1947, c. 118; 1957, c. 753, s. 4; c. 1424, s. 2; 1965, c. 957, s. 11; 1973, c. 1262, ss. 28, 86.)

Cross Reference. — As to Wildlife Resources Law, see § 143-237 et seq.

Editor's Note. — The 1973 amendment deleted the former first and last paragraphs, relating to supervision and control of the Department of Conservation and Development by the Board of Conservation and Development, substituted "The Department of Natural and Economic Resources" for "It" at the beginning of the present first paragraph, substituted "Department of Natural and Economic Resources" for "Board" in the present sixth and seventh paragraphs and near the beginning of the present last paragraph and deleted "of Conservation and Development" following "functions of the Department" in the present last paragraph.

Cited in Williams v. McSwain, 248 N.C. 13, 102 S.E.2d 464 (1958).

§ 113-8.1: Repealed by Session Laws 1959, c. 779, s. 3.

§§ 113-9 to 113-13: Repealed by Session Laws 1973, c. 1262, s. 28.

§ 113-14. Publications. — The Department of Natural and Economic Resources may also cause to be prepared for publication, from time to time, reports and statements, with illustrations, maps and other descriptions, which may adequately set forth the natural and material resources of the State and its industrial and commercial developments, with a view to furnishing information to educate the people with reference to the material advantages of the State, to encourage and foster existing industries, and to present inducements for investment in new enterprises. Such information shall be published and distributed as the Department of Natural and Economic Resources may direct, at the expense of the State as other public documents. (1925, c. 122, s. 11; 1973, c. 1262, s. 28.)

Editor's Note. — The 1973 amendment deleted the former first paragraph, relating to reports to the Governor and General Assembly, substituted "Department of Natural and Economic Resources" for "Board" in the first and second sentences, and deleted "reports and" preceding "information" near the beginning of the second sentence.

§ 113-14.1. Promotion of seashore industry and recreation. — (a) Repealed by Session Laws 1973, c. 1262, s. 28.

(b) The following powers are hereby granted to the Secretary of Natural and Economic Resources and may be delegated to the administrative head of an existing or new division of the Department as herein authorized:

(1) Assist in the sound development of the seacoast areas of the State, giving emphasis to the advancement and development of the travel attractions and facilities for accommodating travelers in these areas;

(2) Plan and promote recreational and industrial developments in these areas, with emphasis upon making the seashore areas of North Carolina attractive to visitors and to permanent residents;
(3) Coordinate the activities of local governments, agencies of the State and agencies of the federal government in planning and development of the seacoast areas for the purpose of attracting visitors and new industrial growth;
(4) Study the development of the seacoast areas and implement policies which will promote the development of the coastal area, with particular emphasis upon the development of the scenic and recreational resources of the seacoast;
(5) Advise and confer with various interested individuals, organizations and State, federal and local agencies which are interested in development of the seacoast area and use its facilities and efforts in planning, developing and carrying out overall programs for the development of the area as a whole;
(6) Act as liaison between agencies of the State, local government, and agencies of the federal government concerned with development of the seacoast region;
(7) Repealed by Session Laws 1973, c. 1262, s. 28;
(8) Make such reports to the Governor as he may request;
(9) File such recommendations or suggestions as it may deem proper with other agencies of the State, local or federal governments.

Provided, however, that the provisions of this section and G.S. 113-14.2 shall not be construed as affecting the authority of the Environmental Management Commission concerning shore-erosion control or prevention, beach protection, or hurricane protection under G.S. 143-355 or any other provision of law. (1969, c. 1143, ss. 2, 3; 1973, c. 1262, s. 28.)

Editor's Note. — The 1973 amendment repealed former subsection (a), relating to creation within the former Department of Conservation and Development of a division for the purpose of promoting seashore industry and recreation, substituted "Secretary of Natural and Economic Resources" for "Director of the Department of Conservation and Development" in the introductory paragraph of subsection (b), repealed subdivision (7) of subsection (b), relating to an annual report to the Board of Conservation and Development, and substituted "Environmental Management Commission" for "Department of Water and Air Resources" in the last paragraph of subsection (b).

Section 113-14.2, referred to in the last paragraph, and relating to the former Seashore Advisory Board, was repealed by Session Laws 1971, c. 882, s. 8.

§ 113-14.2: Repealed by Session Laws 1971, c. 882, s. 8.

Cross Reference. — See Editor's note under § 113-14.1.

§ 113-15. Advertising of State resources and advantages. — It is hereby declared to be the duty of the Department of Natural and Economic Resources to map out and to carry into effect a systematic plan for the nationwide advertising of North Carolina, properly presenting, by the use of any available advertising media, the true facts concerning the State of North Carolina and all of its resources. (1937, c. 160; 1953, c. 808, s. 4; 1973, c. 1262, s. 86.)

Editor's Note. — The 1973 amendment substituted "Department of Natural and Economic Resources" for "Department of Conservation and Development."

§ 113-15.1: Repealed by Session Laws 1969, c. 1145, s. 4.

Cross Reference. — As to transfer of functions, property, etc., of the Division of Community Planning to the Department of Local Affairs, see § 143-326.

§ 113-15.2. Investigation of impact of proposed new and expanding industry. — It is hereby declared to be the duty of the Department of Natural and Economic Resources, in the process of exercising its powers to promote the development of commerce and industry, to conduct an evaluation in conjunction with other State agencies having environmental responsibilities of the effects on the State's natural and economic environment of any new or expanding industry or manufacturing plant locating in North Carolina. In order to discharge this duty, the Secretary of the Department may hire persons expressly to conduct investigations and evaluations of new and expanding industry and to prepare reports outlining the impact of such industry on the environment. (1971, c. 824; 1973, c. 1262, ss. 28, 86.)

Editor's Note. — The 1973 amendment substituted "Department of Natural and Economic Resources" for "Department of Conservation and Development" in the first sentence, substituted "Secretary" for "Director" and deleted "with the approval of the Board" following "Department" in the second sentence and deleted the former last sentence, authorizing the Director of the former Department of Conservation and Development to adopt rules and regulations necessary to carry out the duty imposed by this section.

§ 113-16. Cooperation with agencies of the federal government. — The Department of Natural and Economic Resources is authorized to arrange for and accept such aid and cooperation from the several United States government bureaus and other sources as may assist in completing topographic surveys and in carrying out the other objects of the Department.

The Department of Natural and Economic Resources is further authorized and directed to cooperate with the Federal Power Commission in carrying out the rules and regulations promulgated by that Commission; and to act in behalf of the State in carrying out any regulations that may be passed relating to water powers in this State other than those related to making and regulating rates. The provisions of this section are extended to apply to cooperation with authorized agencies of other states. (1925, c. 122, s. 18; 1929, c. 297, s. 2; 1973, c. 1262, s. 28.)

Editor's Note. — The 1973 amendment substituted "Department of Natural and Economic Resources" for "Board."

§ 113-17. Agreements, negotiations and conferences with federal government. — The Department of Natural and Economic Resources is delegated as the State Agency to represent North Carolina in any agreements, negotiations, or conferences with authorized agencies of adjoining or other states, or agencies of the federal government, relating to the joint administration or control over the surface or underground waters passing or flowing from one state to another: Provided, that in all matters relating to pollution of said waters the Department and the Department of Human Resources, acting jointly, are hereby designated as the official agency under the provisions of this section. (1929, c. 297, s. 1; 1973, c. 476, s. 128; c. 1262, s. 86.)

Editor's Note. — The first 1973 amendment substituted "Department of Human Resources" for "State Board of Health" in the proviso.

The second 1973 amendment substituted "Department of Natural and Economic Resources" for "Department of Conservation and Development" near the beginning of the section.

§ 113-18. Department authorized to receive funds from Federal Power Commission. — All sums payable to the State of North Carolina by the Treasurer of the United States of America under the provisions of section 17 and other sections of the Federal Water Power Act shall be paid to the account of the State Department of Natural and Economic Resources as the authorized agent of the State for receipt of said payments. Such sums shall be used by the Department of Natural and Economic Resources in prosecuting investigations for the utilization and development of the water resources of the State. (1929, c. 288; 1973, c. 1262, s. 86.)

Editor's Note. — The 1973 amendment substituted "Department of Natural and Economic Resources" for "Department of Conservation and Development."

§ 113-19. Cooperation with other State departments. — The Department of Natural and Economic Resources is authorized to cooperate with the North Carolina Utilities Commission in investigating the waterpowers in the State, and to furnish the Utilities Commission such information as is possible regarding the location of the waterpower sites, developed waterpowers, and such other information as may be desired in regard to waterpower in the State; the Department of Natural and Economic Resources shall also cooperate as far as possible with the Department of Labor, the State Department of Agriculture, and other departments and institutions of the State in collecting information in regard to the resources of the State and in preparing the same for publication in such manner as may best advance the welfare and improvement of the State. (1925, c. 122, s. 16; 1927, c. 57, s. 1; 1931, c. 312; 1933, c. 134, s. 8; 1973, c. 1262, s. 28.)

Editor's Note. — The 1973 amendment substituted "Department of Natural and Economic Resources" for "Board."

§ 113-20. Cooperation with counties and municipal corporations. — The Department of Natural and Economic Resources is authorized to cooperate with the counties of the State in any surveys to ascertain the natural resources of the county; and with the governing bodies of cities and towns, with boards of trade and other like civic organizations, in examining and locating water supplies and in advising and recommending plans for other municipal improvements and enterprises. Such cooperation is to be conducted upon such terms as the Department of Natural and Economic Resources may direct. (1925, c. 122, s. 17; 1973, c. 1262, s. 28.)

Editor's Note. — The 1973 amendment substituted "Department of Natural and Economic Resources" for "Board."

For note on defining navigable waters and the application of the public trust doctrine in North Carolina, see 49 N.C.L. Rev. 888 (1971).

§ 113-21. Cooperation of counties with State in making water resource survey. — The board of county commissioners of any county of North Carolina is authorized and empowered, in their discretion, to cooperate with the Department of Natural and Economic Resources or other association, organization, or corporation in making surveys of any of the natural resources

of their county, and to appropriate and pay out of the funds under their control such proportional part of the cost of such survey as they may deem proper and just. (1921, c. 208; 1925, c. 122, s. 4; 1973, c. 1262, s. 86.)

Editor's Note. — The 1973 amendment substituted "Department of Natural and Economic Resources" for "Department of Conservation and Development."

§ 113-22. Control of State forests. — The Department of Natural and Economic Resources and Secretary of Natural and Economic Resources shall have charge of all State forests, and measures for forest fire prevention. (1925, c. 122, s. 22; 1973, c. 1262, ss. 28, 86.)

Editor's Note. — The 1973 amendment substituted "Department of Natural and Economic Resources" for "Board" and "Secretary of Natural and Economic Resources" for "Director."

§ 113-23. Control of Mount Mitchell Park and other State parks. — The Department of Natural and Economic Resources shall have the control and management of Mount Mitchell Park and of any other parks which have been or may be acquired by the State as State parks. (1925, c. 122, s. 23; 1973, c. 1262, s. 28.)

Cross Reference. — For further provisions relating to Mount Mitchell Park, see §§ 100-11 through 100-15.

Editor's Note. — The 1973 amendment substituted "Department of Natural and Economic Resources" for "Board."

§ 113-24. Protection of waterfowl food growing in public waters. — The Secretary of Natural and Economic Resources shall have absolute control and authority over all the aquatic plant foods or other waterfowl food growing in the public waters of North Carolina. None of same shall be sold, transported or shipped from the State except by permission in writing obtained from the Secretary of Natural and Economic Resources. Any person, firm or corporation violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than one hundred dollars ($100.00) nor more than five hundred dollars ($500.00) or imprisoned not less than 90 days nor more than six months, or both such fine and imprisonment, in the discretion of the court. (1935, c. 135; 1941, c. 205; 1973, c. 1262, s. 86.)

Editor's Note. — The 1973 amendment substituted "Secretary of Natural and Economic Resources" for "Director of the State Department of Conservation and Development."

§ 113-25. Notice to Department before beginning business of manufacturing products from mineral resources of State. — Every person, firm or corporation engaging in the manufacture or production of any product from any natural resources, classified as mineral products, shall before beginning such operation, or if already engaged in such business, within 90 days after March 9, 1927, notify the Department of its intention to begin or continue such business, and also notify said Department of the product or products it intends to produce.

Every person, firm or corporation now engaged or hereafter engaging in the manufacture or production of any product from any natural resources of the State classified as mineral products, shall notify the Department when such person, firm or corporation shall discontinue such manufacture or production.

Any person, firm or corporation failing to comply with the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined not

more than twenty-five dollars ($25.00) and not less than five dollars ($5.00), in the discretion of the court. (1927, c. 258.)

§ 113-26: Repealed by Session Laws 1959, c. 683, s. 6.

§ 113-26.1. Bureau of Mines; mineral museum. — The Governor and the Council of State are hereby authorized, in their discretion and at such times as the development of the mineral resources and the expansion of mining operations in the State justify and make reasonably necessary, to create and establish as a part of the Department of Natural and Economic Resources a Bureau of Mines, or a mineral museum in cooperation with the National Park Service, to be located in the western part of the State, with a view to rendering such aid and assistance to mining developments in this State as may be helpful in this expanding industry, and to allocate from the Contingency and Emergency Fund such funds as may reasonably be necessary for the establishment and operation of such Bureau of Mines or mineral museum.

Upon the creation and establishment of such Bureau of Mines or mineral museum as herein authorized, the same shall be operated under such rules and regulations as may be adopted by the Department of Natural and Economic Resources. (1943, c. 612; 1953, c. 1104, ss. 1-3; 1973, c. 1262, ss. 28, 86.)

Editor's Note. — The 1973 amendment substituted "Department of Natural and Economic Resources" for "Department of Conservation and Development" in the first paragraph and for "Board of Conservation and Development" in the second paragraph.

§ 113-27: Repealed by Session Laws 1959, c. 779, s. 3.

§ 113-28. Reimbursement of government for expense of emergency conservation work. — When and if, upon the sale of State land or its products, the Secretary of Natural and Economic Resources determines that the State has derived a direct profit as a result of work on the land sold, or on land the products of which are sold, done or to be done, under a project carried on pursuant to an act of Congress entitled, "An act for the relief of unemployment through the performance of useful public work, and for other purposes" approved March 31, 1933, one half of such profit from such sale of land, or one half the proceeds of the sale of such products, or such lesser amount as may be sufficient, shall be applied to or toward reimbursing the United States government for moneys expended by it under such act, for the work so done, to the extent and at the rate of one dollar ($1.00) per man per day, for the time spent in such work, but not exceeding in the aggregate three dollars ($3.00) per acre. The Secretary of Natural and Economic Resources shall fix and determine the amount of such profit or proceeds. Such one-half part of such proceeds or profits, as the case may be, shall be retained by the Department of Natural and Economic Resources, or paid over to it by any other authorized agency making the sale, to be so retained by such Department until the account of the United States government, with respect to such sale, becomes liquidated. Upon completion of the sale, the Department of Natural and Economic Resources is hereby authorized to settle with the proper federal authority an account fixing the amount due the United States government and to pay over to it the amount so fixed. The unexpended remainder, if any, of such one-half part of such profit or proceeds shall then be paid over or applied by said Department of Natural and Economic Resources as now authorized and directed by law. This section shall not be construed to authorize the sale of State lands or products, but applies only to a sale now or hereafter authorized by other provisions of law. This section is enacted to procure a continuance of the emergency conservation work within the State, under such act of Congress. (1935, c. 115; 1973, c. 1262, s. 86.)

Editor's Note. — The 1973 amendment substituted "Secretary of Natural and Economic Resources" for "Director of Conservation and Development" and "Department of Natural and Economic Resources" for "Department of Conservation and Development."

ARTICLE 1A.

Special Peace Officers.

§ 113-28.1. Designated employees commissioned special peace officers by Governor. — Upon application by the Secretary of Natural and Economic Resources, the Governor is hereby authorized and empowered to commission as special peace officers such of the employees of the Department of Natural and Economic Resources as the Secretary may designate for the purpose of enforcing the laws, rules and regulations enacted or adopted for the protection, preservation and government of State parks, lakes, reservations and other lands or waters under the control or supervision of the Department of Natural and Economic Resources. Such employees shall receive no additional compensation for performing the duties of special peace officers under this Article. (1947, c. 577; 1973, c. 1262, s. 86.)

Editor's Note. — The 1973 amendment substituted "Secretary of Natural and Economic Resources" for "Director of the Department of Conservation and Development," "Secretary" for "Director" and "Department of Natural and Economic Resources" for "Department of Conservation and Development."

§ 113-28.2. Powers of arrest. — Any employee of the Department of Natural and Economic Resources commissioned as a special peace officer shall have the right to arrest with warrant any person violating any law, rule or regulation on or relating to the State parks, lakes, reservations and other lands or waters under the control or supervision of the Department of Natural and Economic Resources, and shall have the power to pursue and arrest without warrant any person violating in his presence any law, rule or regulation on or relating to said parks, lakes, reservations and other lands or waters under the control or supervision of the Department of Natural and Economic Resources. (1947, c. 577; 1973, c. 1262, s. 86.)

Editor's Note. — The 1973 amendment substituted "Department of Natural and Economic Resources" for "Department of Conservation and Development."

§ 113-28.3. Bond required. — Each employee of the State Department of Natural and Economic Resources commissioned as a special peace officer under this Article shall give a bond with a good surety, payable to the State of North Carolina in a sum not less than one thousand dollars ($1,000), conditioned upon the faithful discharge of his duty as such peace officer. The bond shall be duly approved by and filed in the office of the Commissioner of Insurance, and copies of the same, certified by the Commissioner of Insurance, shall be received in evidence in all actions and proceedings in this State. (1947, c. 577; 1973, c. 1262, s. 86.)

Editor's Note. — The 1973 amendment substituted "Department of Natural and Economic Resources" for "Department of Conservation and Development."

§ 113-28.4. Oaths required. — Before any employee of the Department of Natural and Economic Resources commissioned as a special peace officer shall exercise any power of arrest under this Article, he shall take the oaths required

of public officers before an officer authorized to administer oaths. (1947, c. 577; 1973, c. 1262, s. 86.)

Editor's Note. — The 1973 amendment substituted "Department of Natural and Economic Resources" for "Department of Conservation and Development."

ARTICLE 1B.

Aviation.

§ 113-28.5. Legislative intent. — It is the declared intention of the General Assembly to authorize, subject to the limitations and conditions of this Article, the provision of State aid in the form of loans and grants to the cities, counties and public airport authorities of North Carolina for the purposes of planning, acquiring, constructing, or improving municipal, county or public authority airport facilities; and to authorize related programs of education, promotion and long-range planning for such facilities. (1967, c. 1006, s. 1.)

§ 113-28.6. Designation of administering agency. — The Department of Natural and Economic Resources, Commerce and Industry Division, is hereby designated as the State agency to carry out the purposes of this Article subject to the general supervisory powers of the Secretary and the Department of Natural and Economic Resources. In exercising such powers the Department shall:

(1) The Department of Transportation and Highway Safety shall promote the further development and improvement of air routes, airport facilities, seaplane bases, heliports, protect their approaches, and stimulate the development of aviation commerce and air facilities. In exercising this power, the Department of Transportation and Highway Safety shall prepare and develop goals, objectives, standards and policies for the most efficient and economical expenditure of such State funds as may be appropriated for purposes of this Article.

(2) Publish and make available to aviation interest, the Federal Aviation Agency, and the people of the State generally current information regarding such criteria, standards, and policies.

(3) Prepare and keep current a State airport plan and submit annual revisions of that plan to the Federal Aviation Agency.

(4) Make detailed and thorough study of all applications for State assistance authorized herein and make specific recommendations regarding each such application to the Department of Natural and Economic Resources and to the Federal Aviation Agency.

(5) Recommend annually, or more often if the Department deems necessary, a plan of priorities and allocations of State funds to the Department of Natural and Economic Resources.

(6) Represent the State before all federal agencies and elsewhere where the aviation interests of the State may be affected.

(7) Subject to the availability of funds for the purpose, conduct such promotional, educational and other programs as may be necessary to keep the people of the State properly informed with respect to aviation, and to further aeronautics generally throughout the State.

(8) In exercising the foregoing powers, the Department of Natural and Economic Resources shall consult with and seek the advice of the committee known as "The Governor's Aviation Committee." Such committee shall consist of 11 members appointed by the Governor, who in making such appointments, shall designate one person from each of the congressional districts of the State. The Governor shall designate the chairman. Six members shall be appointed to serve for terms of four

years each, and five members shall be appointed to serve for terms of two years each. Thereafter, upon the expiration of their respective terms, the successors of said members shall be appointed for terms of four years each. At least four of these members, so appointed, shall possess a broad knowledge of aviation and airport development. All members appointed to the committee shall serve for the duration of their respective terms and until their successors are appointed and qualified. Any vacancy occurring in the membership of said committee because of death, resignation, or otherwise shall be filled by the Governor for the unexpired term of such member. Members of the committee shall meet twice each year and shall receive as compensation for their services seven dollars ($7.00) for each day actually engaged in the exercise of the duties of the committee and such travel expenses and subsistence allowances as are generally allowed other State commissions and boards. (1967, c. 1006, s. 1; 1973, c. 507, s. 5; c. 1262, ss. 28, 86; c. 1443, s. 1.)

Editor's Note. — The first 1973 amendment substituted "Board of Transportation" for "State Highway Commission" in subdivision (1).

The second 1973 amendment substituted "Department of Natural and Economic Resources" for "Department of Conservation and Development" near the beginning, and for "Board of Conservation and Development" near the end of the first sentence of the introductory paragraph, and substituted "Secretary" for "Director" in that sentence. The amendment also substituted "Department of Natural and Economic Resources" for "Board of Conservation and Development" in subdivisions (4) and (5) and for "Department of Conservation and Development" near the beginning of the first sentence of subdivision (8).

The third 1973 amendment added the first sentence of subdivision (1), added "in exercising this power, the Department of Transportation and Highway Safety shall" at the beginning of the second sentence of subdivision (1), substituted "goals, objectives, standards" for "standards, criteria" in that sentence and deleted, at the end of the sentence, "including consultation with the Board of Transportation, concerning road and runway construction."

State Government Reorganization. — The Governor's Aviation Committee was transferred to the Department of Transportation and Highway Safety by § 143A-104, enacted by Session Laws 1971, c. 864.

§ 113-28.7. Activities eligible for State aid. — Loans and grants of State funds may be made for the planning, acquisition, construction, or improvement of any airport, seaplane base, or heliport owned or controlled, or which will be owned and controlled by any city, county or public airport authority acting by itself or jointly with any other city or county. An airport, seaplane base, or heliport development project or activity eligible for State aid under this Article shall also be deemed to include projects such as air navigation facilities, aviation easements, and the acquisition of land, lighting, marking, security items, terminal improvements, and the elimination of aviation safety hazards. (1967, c. 1006, s. 1; 1973, c. 1443, s. 2.)

Editor's Note. — The 1973 amendment inserted "seaplane base, or heliport" in the first and second sentences and substituted, at the end of the second sentence, "security items, terminal improvements, and the elimination of aviation safety hazards" for "or elimination of airport hazards."

§ 113-28.8. Limitations on State financial aid. — Grants and loans of funds authorized by this Article shall be subject to the following conditions and limitations:

(1) Loans and grants may be for such projects, activities, or facilities as would in general be eligible for approval by the Federal Aviation Administration or its successor agency or agencies. Further, airport

terminal and security areas, seaplane bases, and heliports are also eligible for State financial aid.

(2) Loans and grants of State funds shall be limited to a maximum of fifty percent (50%) of the nonfederal share of the total cost of any project for which aid is requested, and shall be made only for the purpose of supplementing such other funds, public or private, as may be available from federal or local sources provided, however, using Department of Transportation personnel and one hundred percent (100%) State funding in its discretion, the Department of Transportation and Highway Safety may purchase, install, and maintain navigational aids necessary for the safe, efficient use of airspace, mark serviceable runways and taxiways and correct minor safety deficiencies which are determined to be hazardous to the flying public.

(3) Loans and grants of State funds shall be made from General Assembly appropriations specifically designated for aviation improvement, and from no other source. (1967, c. 1006, s. 1; 1969, c. 293; 1973, c. 1262, s. 28; c. 1443, s. 3.)

Editor's Note. — The first 1973 amendment substituted "Department of Natural and Economic Resources" for "Board of Conservation and Development" in subdivision (4) as it stood prior to the second 1973 amendment.

The second 1973 amendment rewrote the section.

§ 113-28.9. Sources of State funds. — State financial assistance under this Article shall be limited to appropriations of funds made for the purpose by the General Assembly to the Department of Natural and Economic Resources, or to private funds which may become available to the Department for such purpose. (1967, c. 1006, s. 1; 1973, c. 1262, s. 86.)

Editor's Note. — The 1973 amendment substituted "Department of Natural and Economic Resources" for "Department of Conservation and Development."

§ 113-28.10. Acceptance, receipt, accounting, and expenditure of State and federal funds. — All North Carolina municipalities, counties and public airport authorities are hereby authorized to accept, receive, receipt for, disburse and expend State funds, and other funds, public and private, which may be made available to them to accomplish any purpose of this Article. All federal funds accepted and expended by any municipality or county shall be accepted, accounted for, and expended according to such terms and conditions as may be prescribed by the United States and not inconsistent with State law. All State funds accepted by any municipality, county or public airport authority shall be accepted, accounted for, and expended according to such terms and conditions as may be prescribed by the State Department of Natural and Economic Resources. Unless otherwise prescribed by the federal or State agency from which funds were made available, the chief financial officer of the municipality, county or public airport authority shall deposit all funds received and keep the same in separate funds according to the purpose for which they were received. The accounting of all such funds shall be subject to the municipal and county fiscal control acts. (1967, c. 1006, s. 1; 1973, c. 1262, s. 86.)

Editor's Note. — The 1973 amendment substituted "Department of Natural and Economic Resources" for "Department of Conservation and Development."

§ 113-28.11. Receipt of federal grants. — (a) The North Carolina Department of Natural and Economic Resources is hereby designated as the State agency to accept grants made by the United States, under the "Aviation Facilities Expansion Act of 1969" or any substantially similar federal law. The Department of Natural and Economic Resources shall have authority to disburse said grants in accordance with applicable federal laws and regulations and to enter into contracts with the federal government, municipalities, counties or airport authorities in connection with said grants.

(b) The Department of Natural and Economic Resources shall have authority to act as agent of any public agency which, either individually or jointly with one or more other public agencies, submits to the Secretary of Transportation of the United States an application for financial assistance under the provisions of the Aviation Facilities Expansion Act of 1969 or any similar federal act. (1969, c. 1109, ss. 1, 2; 1973, c. 1262, s. 86.)

Editor's Note. — The 1973 amendment substituted "Department of Natural and Economic Resources" for "Department of Conservation and Development."

§ 113-28.12. Acquisition of land by Department. — The Department of Natural and Economic Resources shall also have authority to acquire by purchase, gift, devise, lease, condemnation, or otherwise, any property, real or personal, or any interest therein, including easements, necessary to establish or develop airports. (1969, c. 1109, s. 3; 1973, c. 1262, s. 86.)

Editor's Note. — The 1973 amendment substituted "Department of Natural and Economic Resources" for "Department of Conservation and Development."

ARTICLE 1C.

Commission on International Cooperation.

§§ 113-28.13 to 113-28.16: Repealed by Session Laws 1973, c. 1262, s. 86.

SUBCHAPTER II. STATE FORESTS AND PARKS.

ARTICLE 2.

Acquisition and Control of State Forests and Parks.

§ 113-29. Policy and plan to be inaugurated by Department of Natural and Economic Resources. — The Department of Natural and Economic Resources as the Department of Natural and Economic Resources, shall inaugurate the following policy and plan looking to the cooperation with private and public forest owners in this State insofar as funds may be available through legislative appropriation, gifts of money or land, or such cooperation with landowners and public agencies as may be available:

(1) The extension of the forest fire prevention organization to all counties in the State needing such protection.

(2) To cooperate with federal and other public agencies in the restoration of forest growth on land unwisely cleared and subsequently neglected.

(3) To furnish trained and experienced experts in forest management, to inspect private forestlands and to advise with forest landowners with a view to the general observance of recognized and practical rules of growing, cutting and marketing timber. The services of such trained experts of the Department must naturally be restricted to those

landowners who agree to carry out so far as possible the recommendations of said Department.

(4) To prepare and distribute printed and other material for the use of teachers and club leaders and to provide instruction to schools and clubs and other groups of citizens in order to train the younger generation in the principles of wise use of our forest resources.

(5) To acquire small areas of suitable land in the different regions of the State on which to establish small, model forests which shall be developed and used by the said Department of Natural and Economic Resources as State demonstration forests for experiment and demonstration in forest management. (1939, c. 317, s. 1; 1969, c. 342, s. 1; 1973, c. 1262, ss. 28, 86.)

Editor's Note. — The 1973 amendment substituted "Department of Natural and Economic Resources" for "Department of Conservation and Development through the Division of Forestry, to be known and hereafter designated" and for "North Carolina Forest Service" near the beginning of the introductory paragraph and substituted "Department of Natural and Economic Resources" for "Department of Conservation and Development" in subdivision (5).

§ 113-29.1. Growing of timber on unused State lands authorized. — The Department of Administration may allocate to the Department of Natural and Economic Resources, for management as a State forest, any vacant and unappropriated lands, any marshlands or swamplands, and any other lands title to which is vested in the State or in any State agency or institution, where such lands are not being otherwise used and are not suitable for cultivation. Lands under the supervision of the Wildlife Resources Commission and designated and in use as wildlife management areas, refuges, or fishing access areas and lands used as research stations shall not be subject to the provisions of this section. The Department of Natural and Economic Resources shall plant timber-producing trees on all lands allocated to it for that purpose by the Department of Administration. The Secretary of Natural and Economic Resources may contract with the appropriate prison authorities for the furnishing, upon such conditions as may be agreed upon from time to time between such prison authorities and the Secretary of Natural and Economic Resources, of prison labor for use in the planting, cutting, and removal of timber from State forests which are under the management of the Department of Natural and Economic Resources. (1957, c. 584, s. 1; 1969, c. 342, s. 2; 1973, c. 1262, ss. 28, 86.)

Editor's Note. — The 1973 amendment substituted "Department of Natural and Economic Resources" for "Department of Conservation and Development" in the first sentence and for "Department of Conservation and Development, through the Forest Service" in the third sentence, substituted "Secretary of Natural and Economic Resources" for "Director of Conservation and Development" in two places in the fourth sentence, and substituted "Department of Natural and Economic Resources" for "Forest Service" in the last sentence.

§ 113-30. Use of lands acquired by counties through tax foreclosures as demonstration forests. — The boards of county commissioners of the various counties of North Carolina are herewith authorized to turn over to the said Department of Natural and Economic Resources title to such tax-delinquent lands as may have been acquired by said counties under tax sale and as in the judgment of the Secretary of Natural and Economic Resources may be suitable for the purposes named in G.S. 113-29, subdivision (5). (1939, c. 317, s. 2; 1973, c. 1262, s. 86.)

Editor's Note. — The 1973 amendment substituted "Department of Natural and Economic Resources" for "Department of Conservation and Development" and "Secretary of Natural and Economic Resources" for "State Forester."

§ 113-31. Procedure for acquisition of delinquent tax lands from counties. — In the carrying out of the provisions of G.S. 113-30, the several boards of county commissioners shall furnish forthwith on written request of the Department of Natural and Economic Resources a complete list of all properties acquired by the county under tax sale and which have remained unredeemed for a period of two years or more. On receipt of this list the Secretary of the Department of Natural and Economic Resources shall have the lands examined and if any one or more of these properties is in his judgment suitable for the purposes set forth in G.S. 113-30, request shall be made to the county commissioners for the acquisition of such land by the Department at a price not to exceed the actual amount of taxes due without penalties. On receipt of this request the county commissioners shall make permanent transfer of such tract or tracts of land to the Department through fee-simple deed or other legal transfer, said deed to be approved by the Attorney General of North Carolina, and shall then receive payment from the Department as above outlined. (1939, c. 317, s. 3; 1973, c. 1262, ss. 28, 86.)

Editor's Note. — The 1973 amendment substituted "Department of Natural and Economic Resources" for "Department of Conservation and Development" in the first sentence, substituted "Secretary of the Department of Natural and Economic Resources" for "State Forester of the Department of Conservation and Development" in the second sentence and deleted "through the Director of said Department" following "request shall be made" in the second sentence.

§ 113-32. Purchase of lands for use as demonstration forests. — Where no suitable tax-delinquent lands are available and in the judgment of the Department of Natural and Economic Resources the establishment of a demonstration forest is advisable, the Department may purchase sufficient land for the establishment of such a demonstration forest at a fair and agreed-upon price, the deed for such land to be subject to approval of the Attorney General, but nothing in G.S. 113-29 to 113-33 shall allow the Department of Natural and Economic Resources to acquire land under the right of eminent domain. (1939, c. 317, s. 4; 1973, c. 1262, s. 86.)

Editor's Note. — The 1973 amendment substituted "Department of Natural and Economic Resources" for "Department of Conservation and Development."

§ 113-33. Forest management appropriation. — Necessary funds for carrying out the provisions of G.S. 113-29 and 113-30 to 113-33 shall be set up in the regular budget as an item entitled "forest management." (1939, c. 317, s. 5.)

§ 113-34. Power to acquire lands as State forests, parks, etc.; donations or leases by United States; leases for recreational purposes; rules governing public use. — The Governor of the State is authorized upon recommendation of the Department of Natural and Economic Resources to accept gifts of land to the State, the same to be held, protected, and administered by said Department of Natural and Economic Resources as State forests, and to be used so as to demonstrate the practical utility of timber culture and water conservation, and as refuges for game. Such gifts must be absolute except in such cases as where the mineral interest on the land has previously been sold. The State Department of Natural and Economic Resources shall have the power

to purchase lands in the name of the State, suitable chiefly for the production of timber, as State forests, for experimental, demonstration, educational, park, and protection purposes, using for such purposes any special appropriations or funds available. The State Department of Natural and Economic Resources shall also have the power to acquire by condemnation under the provisions of Chapter 40, such areas of land in different sections of the State as may in the opinion of the Department of Natural and Economic Resources be necessary for the purpose of establishing and/or developing State forests, State parks and other areas and developments essential to the effective operation of the State forestry and State park activities with which the Department of Natural and Economic Resources has been or may be entrusted. Such condemnation proceedings shall be instituted and prosecuted in the name of the State of North Carolina, and any property so acquired shall be administered, developed and used for experiment and demonstration in forest management, for public recreation and for such other purposes authorized or required by law: Provided, that before any action or proceeding under this section can be exercised, the approval of the Governor and Council of State shall be obtained and filed with the clerk of the superior court in the county or counties where such property may be situate, and until such approval is obtained, the rights and powers conferred by this section shall not be exercised. The Attorney General of the State is directed to see that all deeds to the State for land mentioned in this section are properly executed before the gift is accepted or payment of the purchase money is made.

The Department of Natural and Economic Resources is further authorized and empowered to accept as gifts to the State of North Carolina such forest and submarginal farmland acquired by said federal government as may be suitable for the purpose of creating and maintaining state-controlled forests, game refuges, public shooting grounds, State parks, State lakes, and other recreational areas, or to enter into longtime leases with the federal government for such areas and administer them with such funds as may be secured from their administration in the best interest of longtime public use, supplemented by such necessary appropriations as may be made by the General Assembly. The Department of Natural and Economic Resources is further empowered to segregate State hunting and fishing licenses, use permits, and concessions and other proper revenue secured through the administration of such forests, game refuges, public shooting grounds, State parks, State lakes, and other recreational areas to be deposited in the State treasury to the credit of the Department to be used for the administration of these areas.

The Department of Natural and Economic Resources, with the approval of the Governor and Council of State, is further authorized and empowered to enter into leases of lands and waters for State parks, State lakes and recreational purposes; and the State Department of Natural and Economic Resources may construct, operate and maintain on said lands and waters suitable public service facilities and conveniences and may charge and collect reasonable fees for

(1) The erection, maintenance and use of docks, piers and such other structures as may be permitted in or on said waters under its own regulations;

(2) Fishing privileges in said waters, provided that such privileges shall be extended only to holders of bona fide North Carolina fishing licenses, and provided further that all State fishing laws and regulations are complied with.

The Department of Natural and Economic Resources may make reasonable rules and regulations for the operation and use of boats or other craft on the surface of the said waters but shall not be authorized to charge or collect fees for such operation or use.

The Department may make reasonable rules for the regulation of the use by the public of said lands and waters and of public service facilities and

conveniences constructed thereon, and said regulations shall have the force and effect of law and any violation of such regulations shall constitute a misdemeanor and shall be punishable by a fine of not more than fifty dollars ($50.00) or imprisonment of not more than 30 days.

The authority herein granted is in addition to other authority now held and exercised by the Department of Natural and Economic Resources. (1915, c. 253, s. 1; C. S., s. 6124; 1925, c. 122, s. 22; 1935, c. 226; 1941, c. 118, s. 1; 1951, c. 443; 1953, c. 1109; 1957, c. 988, s. 2; 1965, c. 1008, s. 1; 1973, c. 1262, ss. 28, 86.)

Local Modification. — Swain: 1951, c. 443.

Editor's Note. — The 1973 amendment substituted "Department of Natural and Economic Resources" for "Board of Conservation and Development" and for "Board" in the first sentence of the first paragraph, for "Board of Conservation and Development" in the third sentence and near the beginning of the fourth sentence of the first paragraph and near the beginning of the first sentence of the second paragraph, and for "Department of Conservation and Development" throughout the rest of the section.

Deed Conveying Revolutionary War Battle Site to State for Specific Purposes Held to Be Absolute. — See Roten v. State, 8 N.C. App. 643, 174 S.E.2d 384 (1970).

§ 113-35. State timber may be sold by Department of Natural and Economic Resources; forest nurseries; control over parks, etc.; operation of public service facilities; concessions to private concerns. — Timber and other products of such State forestlands may be sold, cut and removed under rules and regulations of the Department of Natural and Economic Resources. The Department shall have authority to establish and operate forest tree nurseries and forest tree seed orchards. Forest tree seedlings and seed from these nurseries and seed orchards may be sold to landowners of the State for purposes of forestation under rules and regulations of the Department of Natural and Economic Resources. When the Secretary of Natural and Economic Resources determines that a surplus of seedlings or seed exists, this surplus may be sold, and such sale shall be in conformity with the following priority of sale: first, to agencies of the federal government for planting in the State of North Carolina; second, to commercial nurseries and nurserymen within this State; and third, without distinction, to federal agencies, to other states, and to recognized research organizations for planting either within or outside of this State. The Department shall make reasonable rules for the regulation of the use by the public of such and all State forests, State parks, State lakes, game refuges and public shooting grounds under its charge, which regulations, after having been posted in conspicuous places on and adjacent to such properties of the State and at the courthouse of the county or counties in which such properties are situated shall have the force and effect of law and any violation of such regulations shall constitute a misdemeanor and shall be punishable by a fine of not more than fifty dollars ($50.00) or by imprisonment for not exceeding 30 days.

The Department may construct and operate within the State forests, State parks, State lakes and any other areas under its charge suitable public service facilities and conveniences, and may charge and collect reasonable fees for the use of same; it may also charge and collect reasonable fees for:

(1) The erection, maintenance and use of docks, piers and such other structures as may be permitted in or on State lakes under its own regulations;

(2) Hunting privileges on State forests and fishing privileges in State forests, State parks and State lakes, provided that such privileges shall be extended only to holders of bona fide North Carolina hunting and fishing licenses, and provided further that all State game and fish laws and regulations are complied with.

The Department of Natural and Economic Resources may make reasonable rules and regulations for the operation and use of boats or other craft on the surface of the said waters but shall not be authorized to charge or collect fees for such operation or use.

The Department may also grant to private individuals or companies concessions for operation of public service facilities for such periods and upon such conditions as the Department of Natural and Economic Resources shall deem to be in the public interest. The Department may make reasonable rules for the regulations of the use by the public of the public service facilities and conveniences herein authorized, which regulations shall have the force and effect of law, and any violation of such regulations shall constitute a misdemeanor and shall be punishable by a fine of not more than fifty dollars ($50.00) or by imprisonment for not exceeding 30 days. (1931, c. 111; 1947, c. 697; 1965, c. 1008, s. 2; 1969, c. 343; 1973, c. 547; c. 1262, ss. 28, 86.)

Editor's Note. — The first 1973 amendment rewrote the fourth sentence of the first paragraph.

The second 1973 amendment substituted "Department of Natural and Economic Resources" in two places in the first paragraph and in the last sentence of the second paragraph and for "Board of Conservation and Development" in the first sentence of the third paragraph and substituted "Secretary of Natural and Economic Resources" for "State Forester" in the fourth sentence of the first paragraph.

§ 113-36. Application of proceeds from sale of products. — All money received from the sale of wood, timber, minerals, or other products from the State forests shall be paid into the State treasury and to the credit of the Department of Natural and Economic Resources; and such money shall be expended in carrying out the purposes of this Article and of forestry in general, under the direction of the Department of Natural and Economic Resources. (1915, c. 253, s. 2; C. S., s. 6125; 1925, c. 122, s. 22; 1973, c. 1262, s. 28.)

Editor's Note. — The 1973 amendment substituted "Department of Natural and Economic Resources" for "Board of Conservation and Development."

§ 113-37. Legislative authority necessary for payment. — Nothing in this Article shall operate or be construed as authority for the payment of any money out of the State treasury for the purchase of lands or for other purposes unless by appropriation for said purpose by the General Assembly. (1915, c. 253, s. 2½; C. S., s. 6126.)

§ 113-38. Distribution of funds from sale of forestlands. — All funds paid by the National Forest Commission, by authority of act of Congress, approved May 23, 1908 (35 Stat., 260), for the Counties of Avery, Buncombe, Burke, Craven, Haywood, Henderson, Hyde, Jackson, Macon, Montgomery, Swain, Transylvania, Watauga, and Yancey, shall be paid to the proper county officers, and said funds shall, when received, be placed in the account of the general county funds: Provided, however, that in Buncombe County said funds shall be entirely for the use and benefit of the school district or districts in which said national forestlands shall be located.

All funds which may hereafter come into the hands of the State Treasurer from like sources shall be likewise distributed. (Ex. Sess. 1920, c. 6; 1921, c. 179, s. 17; C. S., s. 6126(a); 1933, c. 537, s. 1; 1939, c. 152; 1943, c. 527; 1957, c. 694; 1959, c. 245.)

§ 113-39. License fees for hunting and fishing on government-owned property unaffected. — No wording in G.S. 113-113, or any other North Carolina statute or law, or special act, shall be construed to abrogate the vested rights

of the State of North Carolina to collect fees for license for hunting and fishing on any government-owned land or in any government-owned stream in North Carolina including the license for county, State or nonresident hunters or fishermen; or upon any lands or in any streams hereafter acquired by the federal government within the boundaries of the State of North Carolina. The lands and streams within the boundaries of the Great Smoky Mountains National Park to be excepted from this section. (1933, c. 537, s. 2.)

§ 113-40. Donations of property for forestry or park purposes; agreements with federal government or agencies for acquisition. — The Department of Natural and Economic Resources is hereby authorized and empowered to accept gifts, donations or contributions of land suitable for forestry or park purposes and to enter into agreements with the federal government or other agencies for acquiring by lease, purchase or otherwise such lands as in the judgment of the Department are desirable for State forests or State parks. (1935, c. 430, s. 1; 1973, c. 1262, s. 86.)

Editor's Note. — The 1973 amendment substituted "Department of Natural and Economic Resources" for "Department of Conservation and Development."

§ 113-41. Expenditure of funds for development, etc.; disposition of products from lands; rules and regulations. — When lands are acquired or leased under G.S. 113-40, the Department is hereby authorized to make expenditures from any funds not otherwise obligated, for the management, development and utilization of such areas; to sell or otherwise dispose of products from such lands, and to make such rules and regulations as may be necessary to carry out the purposes of G.S. 113-40 to 113-44. (1935, c. 430, s. 2.)

§ 113-42. Disposition of revenues received from lands acquired. — All revenues derived from lands now owned or later acquired under the provisions of G.S. 113-40 to 113-44 shall be set aside for the use of the Department in acquisition, management, development and use of such lands until all obligations incurred have been paid in full. Thereafter, fifty percent (50%) of all net profits accruing from the administration of such lands shall be applicable for such purposes as the General Assembly may prescribe, and fifty percent (50%) shall be paid into the school fund to be used in the county or counties in which lands are located. (1935, c. 430, s. 3.)

§ 113-43. State not obligated for debts created hereunder. — Obligations for the acquisition of land incurred by the Department under the authority of G.S. 113-40 to 113-44 shall be paid solely and exclusively from revenues derived from such lands and shall not impose any liability upon the general credit and taxing power of the State. (1935, c. 430, s. 4.)

§ 113-44. Disposition of lands acquired. — The Department shall have full power and authority to sell, exchange or lease lands under its jurisdiction when in its judgment it is advantageous to the State to do so in the highest orderly development and management of State forests and State parks: Provided, however, said sale, lease or exchange shall not be contrary to the terms of any contract which it has entered into. (1935, c. 430, s. 5.)

ARTICLE 2A.

Forestry Advisory Committee.

§§ 113-44.1, 113-44.2: Repealed by Session Laws 1973, c. 1262, s. 28.

Cross Reference. — As to the Forestry Council, see §§ 143B-308 through 143B-310.

ARTICLE 3.

Private Lands Designated as State Forests.

§ 113-45. Governor may designate State forests. — The Governor of the State, upon the written application of any owner or owners of wooded lands situated in North Carolina above contour line 2,000 feet, may at his discretion declare the lands of such owner or owners, or such parts thereof as he may deem advisable, a "State forest of North Carolina." (1909, c. 89, s. 1; C. S., s. 6127.)

§ 113-46. Publication of declaration. — The declaration of the Governor shall be published, at the expense of the applicant, in three consecutive issues of any newspaper published in the county or counties wherein the lands declared a State forest reserve are situated, if there be one; if no paper is published in the county or counties, then in a paper published in an adjoining county; and after such publication the said lands shall be a State forest of North Carolina for the term of 30 years. (1909, c. 89, s. 2; C. S., s. 6128.)

§ 113-47. Duty of the landowners. — The owner or owners, when making such written application, shall agree in writing to treat in a conservative manner the proposed State forest described in the application, such manner to be in accordance with a working plan approved by the Department of Natural and Economic Resources; and the owner or owners of such proposed State forest, when making such application, shall agree to pay annually into the school fund of the county wherein such proposed State forest or a part thereof is situated one-half cent (½¢) for every acre of such proposed State forest situated within the county; and if the owner or owners thereafter shall fail to make such annual payment, then the declaration of the Governor establishing the said State forest shall be null and void to all intents and purposes. (1909, c. 89, s. 3; C. S., s. 6129; 1925, c. 122, s. 22; 1973, c. 1262, s. 86.)

Editor's Note. — The 1973 amendment substituted "Department of Natural and Economic Resources" for "Department of Conservation and Development."

§ 113-48. Forest rangers appointed. — The Secretary of the Department of Natural and Economic Resources may appoint as forest rangers such a man or men over 18 years of age as may be recommended for appointment by the owner or owners of such State forest. Such forest rangers are to receive no compensation other than that which the owner or owners of the State forest may pay to them. (1909, c. 89, s. 4; C. S., s. 6130; 1951, c. 575; 1955, c. 910, s. 1; 1971, c. 1231, s. 1; 1973, c. 1262, ss. 28, 86.)

Editor's Note. — The 1973 amendment substituted "Secretary of the Department of Natural and Economic Resources" for "Forester of the Department of Conservation and Development" and deleted "with the approval of the Board of Conservation and Development" following "may appoint" in the first sentence.

§ 113-49. Powers of State forest rangers. — The State forest rangers may make arrest on sight, without warrant, for any criminal offense, as provided in the Chapter on Criminal Law for setting fire to woods, for campfires, for hunting on lands without permission of the owner, for malicious injury to real property, for cutting or removing timber from the land of another, for trespass on land after being forbidden, or for other crime relating to real estate committed within the State forest. They shall safeguard against trespass, and notably against fire,

in the State forest for which they have been appointed; and, as far as the enforcement of the provisions of this Article is concerned, the State forest rangers shall have all the powers, privileges, and protection otherwise had by sheriffs under any law now in force. (1909, c. 89, s. 5; C. S., s. 6131; 1951, c. 575.)

Editor's Note. — For article on the law of arrest in North Carolina, see 15 N.C.L. Rev. 101.

Stated in Alexander v. Lindsey, 230 N.C. 663, 55 S.E.2d 470 (1949).

§ 113-50. Fines imposed. — The minimum fine for any offense mentioned in the preceding section [G.S. 113-49] committed within any State forest shall be fifty dollars ($50.00) if within the jurisdiction of the district court, and twenty-five dollars ($25.00) if within the jurisdiction of the magistrate. (1909, c. 89, s. 6; C. S., s. 6132; 1973, c. 108, s. 64.)

Editor's Note. — The 1973 amendment substituted "district court" for "superior court" and "the magistrate" for "a justice of the peace."

ARTICLE 4.

Protection and Development of Forests; Fire Control.

§ 113-51. Powers of Department of Natural and Economic Resources. — The State Department of Natural and Economic Resources may take such action as it may deem necessary to provide for the prevention and control of forest fires in any and all parts of this State, and it is hereby authorized to enter into an agreement with the Secretary of Agriculture of the United States for the protection of the forested watersheds of streams in this State. (1915, c. 243, s. 1; C. S., s. 6133; 1925, c. 122, s. 22; 1973, c. 1262, s. 28.)

Editor's Note. — The 1973 amendment substituted "Department of Natural and Economic Resources" for "Board of Conservation and Development" near the beginning of the section.

§ 113-52. Forest rangers. — The Secretary of Natural and Economic Resources may appoint one county forest ranger and one or more deputy forest rangers in each county of the State in which, after careful investigation, the amount of forestland and the risks from forest fires shall, in his judgment, warrant the establishment of a forest fire organization. (1915, c. 243, s. 2; C. S., s. 6134; 1925, c. 106, s. 1; c. 122, s. 22; 1927, c. 150, s. 1; 1935, c. 178, s. 1; 1951, c. 575; 1973, c. 1262, s. 28.)

Editor's Note. — The 1973 amendment substituted "Secretary of Natural and Economic Resources" for "Forester of the Department of Conservation and Development, who shall be called the State Forester, and shall be ex officio State forest ranger" and deleted "with the approval of the Board of Conservation and Development" following "may appoint" near the beginning of the section.

§ 113-53: Repealed by Session Laws 1973, c. 1262, s. 28.

§ 113-54. Duties of forest rangers; payment of expenses by State and counties. — Forest rangers shall have charge of measures for controlling forest fires, protection of forests from pests and diseases, and the development and improvement of the forests for maximum production of forest products; shall make arrests for violation of forest laws; shall post along highways and in other conspicuous places copies of the forest fire laws and warnings against fires,

which shall be supplied by the Secretary of Natural and Economic Resources; shall patrol and man lookout towers and other points during dry and dangerous seasons under the direction of the Secretary of Natural and Economic Resources, and shall perform such other acts and duties as shall be considered necessary by the Secretary of Natural and Economic Resources for the purposes set out in Articles 4, 4A, and 6A of this Chapter in the protection, development and improvement of the forested area of each of the counties within the State. No county may be held liable for any part of the expenses thus incurred unless specifically authorized by the board of county commissioners under prior written agreement with the Secretary of Natural and Economic Resources; appropriations for meeting the county's share of such expenses so authorized by the board of county commissioners shall be provided annually in the county budget. For each county in which financial participation by the county is authorized, the Secretary of Natural and Economic Resources shall keep or cause to be kept an itemized account of all expenses thus incurred and shall send such accounts periodically to the board of county commissioners of said county; upon approval by the board of the correctness of such accounts, the county commissioners shall issue or cause to be issued a warrant on the county treasury for the payment of the county's share of such expenditures, said payment to be made within one month after receipt of such statement from the Secretary of Natural and Economic Resources. Appropriations made by a county for the purposes set out in Articles 4, 4A, and 6A of this Chapter in the cooperative forest protection, development and improvement work are not to replace State and federal funds which may be available to the Secretary of Natural and Economic Resources for the work in said county, but are to serve as a supplement thereto. The funds appropriated to the Department of Natural and Economic Resources in the biennial budget appropriation act for the purposes set out in Articles 4, 4A, and 6A of this Chapter shall not be expended in a county unless that county shall contribute at least twenty-five percent (25%) of the total cost of the forestry program. (1915, c. 243, s. 4; C. S., s. 6136; 1925, c. 106, s. 1; 1927, c. 150, s. 3; 1935, c. 178, s. 2; 1943, c. 660; 1947, c. 56, s. 1; 1951, c. 575; 1961, c. 833, s. 17; 1963, c. 312, s. 1; 1973, c. 1262, s. 86.)

Local Modification. — Cumberland: 1943, c. 660.

Editor's Note. — The 1973 amendment substituted "Secretary of Natural and Economic Resources" for "State Forester" and "Department of Natural and Economic Resources" for "Department of Conservation and Development."

§ 113-55. Powers of forest rangers to prevent and extinguish fires. — Forest rangers shall prevent and extinguish forest fires and enforce all statutes of this State now in force or that hereafter may be enacted for the protection of forests and woodlands from fire, and they shall have control and direction of all persons and apparatus while engaged in extinguishing forest fires. Any forest ranger may arrest, without a warrant, any person or persons committing a crime in his presence, and bring such person or persons forthwith before a magistrate or other officer having jurisdiction, who shall proceed without delay to hear, try, and determine the matter. During a season of drought the Secretary of Natural and Economic Resources may establish a fire patrol in any district, and in case of fire in or threatening any forest or woodland the forest ranger shall attend forthwith and use all necessary means to confine and extinguish such fire. The forest ranger or his deputies may summon any male resident between the ages of 18 and 45 years to assist in extinguishing fires, and may require the use of horses and other property needed for such purpose; any person so summoned, and who is physically able, who refuses or neglects to assist or to allow the use of horses, wagons, or other material required, shall be guilty of a misdemeanor and upon conviction shall be subject to a fine of not

less than five dollars ($5.00) nor more than fifty dollars ($50.00). No action for trespass shall lie against any forest ranger or person summoned by him for crossing or working upon lands of another in connection with his duties as forest ranger. (1915, c. 243, s. 6; C. S., s. 6137; 1925, c. 106, ss. 1, 2; c. 240; 1927, c. 150, s. 4; 1951, c. 575; 1963, c. 312, s. 2; 1973, c. 108, s. 65; c. 1262, s. 86.)

Editor's Note. — The first 1973 amendment substituted "magistrate" for "justice of the peace" in the second sentence.

The second 1973 amendment substituted "Secretary of Natural and Economic Resources" for "State Forester."

Workmen's Compensation Act Applicable to Person Appointed by Ranger to Assist. — A forest ranger of a county is given authority by this section to appoint persons between certain ages to assist him in fighting forest fires with pain of penalty upon refusal, and a person so appointed is entitled to receive a small hourly compensation for the services so rendered, and one so appointed is an employee of the State within the meaning of the Workmen's Compensation Act, and is entitled to compensation thereunder for an injury received in the course of and arising out of his duties imposed by such appointment. Moore v. State, 200 N.C. 300, 156 S.E. 806 (1931).

Cited in Tomlinson v. Town of Norwood, 208 N.C. 716, 182 S.E. 659 (1935).

§ 113-56. Compensation of forest rangers. — Forest rangers shall receive compensation from the Department of Natural and Economic Resources at a reasonable rate to be fixed by said Department of Natural and Economic Resources for the time actually engaged in the performance of their duties; and reasonable expenses for equipment, transportation, or food supplies incurred in the performance of their duties, according to an itemized statement to be rendered the Secretary of Natural and Economic Resources every month, and approved by him. Forest rangers shall render to the Secretary of Natural and Economic Resources a statement of the services rendered by the men employed by them or their deputy rangers, as provided in this Article, within one month of the date of service, which bill shall show in detail the amount and character of the service performed, the exact duration thereof, the name of each person employed, and any other information required by the Secretary of Natural and Economic Resources. If said bill be duly approved by the Secretary of Natural and Economic Resources, it shall be paid by direction of the Department of Natural and Economic Resources out of any funds provided for that purpose. (1915, c. 243, s. 7; C. S., s. 6138; 1924, c. 60; 1925, c. 106, ss. 1, 3; c. 122, s. 22; 1947, c. 56, s. 2; 1951, c. 575; 1963, c. 312, s. 3; 1973, c. 1262, ss. 28, 86.)

Editor's Note. — The 1973 amendment substituted "Department of Natural and Economic Resources" for "Board of Conservation and Development" and for "Board" and substituted "Secretary of Natural and Economic Resources" for "State Forester."

§ 113-57. Woodland defined. — For the purposes of this Article, woodland is taken to include all forest areas, both timber and cutover land, and all second-growth stands on areas that have at one time been cultivated. (1915, c. 243, s. 11; C. S., s. 6139.)

§ 113-58. Misdemeanor to destroy posted forestry notice. — Any person who shall maliciously or willfully destroy, deface, remove, or disfigure any sign, poster, or warning notice, posted by order of the Secretary of Natural and Economic Resources, under the provisions of this Article, or any other act which may be passed for the purpose of protecting and developing the forests in this State, shall be guilty of a misdemeanor and upon conviction shall be punishable by a fine of not less than ten dollars ($10.00) nor more than fifty dollars ($50.00), or imprisoned not exceeding 30 days. (1915, c. 243, s. 5; C. S., s. 6140; 1963, c. 312, s. 4; 1973, c. 1262, s. 86.)

Editor's Note. — The 1973 amendment substituted "Secretary of Natural and Economic Resources" for "State Forester."

§ 113-59. Cooperation between counties and State in forest protection and development. — The board of county commissioners of any county is hereby authorized and empowered to cooperate with the Department of Natural and Economic Resources in the protection, reforestation, and promotion of forest management of their own forests within their respective counties, and to appropriate and pay out of the funds under their control such amount as is provided in G.S. 113-54. (1921, c. 26; C. S., s. 6140(a); 1925, c. 122, s. 22; 1945, c. 635; 1963, c. 312, s. 5; 1973, c. 1262, s. 86.)

Editor's Note. — The 1973 amendment substituted "Department of Natural and Economic Resources" for "Department of Conservation and Development."

§ 113-60. Instructions on forest preservation and development. — It shall be the duty of all district, county, township rangers, and all deputy rangers provided for in this Chapter to distribute in all of the public schools and high schools of the county in which they are serving as such fire rangers all such tracts, books, periodicals and other literature that may, from time to time, be sent out to such rangers by the State and federal forestry agencies touching or dealing with forest preservation, development, and forest management.

It shall be the duty of the various rangers herein mentioned under the direction of the Secretary of Natural and Economic Resources, and the duty of the teachers of the various schools, both public and high schools, to keep posted at some conspicuous place in the various classrooms of the school buildings such appropriate bulletins and posters as may be sent out from the forestry agencies herein named for that purpose and keep the same constantly before their pupils; and said teachers and rangers shall prepare lectures or talks to be made to the pupils of the various schools on the subject of forest fires, their origin and their destructive effect on the plant life and tree life of the forests of the State, the development and scientific management of the forests of the State, and shall be prepared to give practical instruction to their pupils from time to time and as often as they shall find it possible so to do. (1925, c. 61, s. 3; 1951, c. 575; 1963, c. 312, s. 6; 1973, c. 1262, s. 86.)

Editor's Note. — The 1973 amendment substituted "Secretary of Natural and Economic Resources" for "State Forester."

§ 113-60.1. Authority of Governor to close forests and woodlands to hunting, fishing and trapping. — During periods of protracted drought or when other hazardous fire conditions threaten forest and water resources and appear to require extraordinary precautions, the Governor of the State, upon the joint recommendation of the Secretary of Natural and Economic Resources and the Executive Director of the North Carolina Wildlife Resources Commission, may by official proclamation:

(1) Close any or all of the woodlands and inland waters of the State to hunting, fishing and trapping for the period of the emergency.
(2) Forbid for the period of the emergency the building of campfires and the burning of brush, grass or other debris within 500 feet of any woodland in any county, counties, or parts thereof.
(3) Close for the period of the emergency any or all of the woodlands of the State to such other persons and activities as he deems proper under

the circumstances, except to the owners or tenants of such property and their agents and employees, or persons holding written permission from any owner or his recognized agent to enter thereon for any lawful purpose other than hunting, fishing or trapping. (1953, c. 305; 1973, c. 1262, s. 86.)

Editor's Note. — The 1973 amendment substituted "Secretary of Natural and Economic Resources" for "Director of the Department of Conservation and Development."

§ 113-60.2. Publication of proclamation; annulment thereof. — Such proclamation shall become effective 24 hours after certified time of issue, and shall be published in such newspapers and posted in such places and in such manner as the Governor may direct. It shall be annulled in the same manner by another proclamation by the Governor when he is satisfied, upon joint recommendation of the Secretary of Natural and Economic Resources and the Executive Director of the North Carolina Wildlife Resources Commission, that the period of the emergency has passed. (1953, c. 305; 1973, c. 1262, s. 86.)

Editor's Note. — The 1973 amendment substituted "Secretary of Natural and Economic Resources" for "Director of the Department of Conservation and Development."

§ 113-60.3. Violation of proclamation a misdemeanor. — Any person, firm or corporation who enters upon any woodlands or inland waters of the State for the purpose of hunting, fishing or trapping, or who builds a campfire or burns brush, grass or other debris within 500 feet of any woodland, after a proclamation has been issued by the Governor forbidding such activities, or who violates any other provisions of the Governor's proclamation with regard to permissible activities in closed woodlands shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined or imprisoned in the discretion of the court. (1953, c. 305.)

ARTICLE 4A.

Protection of Forest against Insect Infestation and Disease.

§ 113-60.4. Purpose and intent. — The purpose of this Article is to place within the Department of Natural and Economic Resources, the authority and responsibility for investigating insect infestations and disease infections which affect stands of forest trees, the devising of control measures for interested landowners and others, and taking measures to control, suppress, or eradicate outbreaks of forest insect pests and tree diseases. (1953, c. 910; 1969, c. 342, s. 3; 1973, c. 1262, ss. 28, 86.)

Editor's Note. — The 1973 amendment substituted "Department of Natural and Economic Resources" for "Department of Conservation and Development, North Carolina Forest Service."

§ 113-60.5. Authority of the Department of Natural and Economic Resources. — The authority and responsibility for carrying out the purpose, intent and provisions of this Article are hereby delegated to the Department of Natural and Economic Resources. The administration of the provisions of this Article shall be under the general supervision of the Secretary of Natural and Economic Resources. The provisions of this Article shall not abrogate or change any power or authority as may be vested in the North Carolina Department of

Agriculture under existing statutes. (1953, c. 910; 1969, c. 342, s. 3; 1973, c. 1262, ss. 28, 86.)

Editor's Note. — The 1973 amendment substituted "Department of Natural and Economic Resources" for "Department of Conservation and Development, North Carolina Forest Service" in the first sentence and deleted "by the State Forester" following "shall be" and substituted "Secretary of Natural and Economic Resources" for "Director of the Department of Conservation and Development" in the second sentence.

§ 113-60.6. Definitions. — As used in this Article, unless the context clearly requires otherwise:

(1) "Control zone" means an area of potential or actual infestation or infection, boundaries of which are fixed and clearly described in a manner to definitely identify the zone.

(2) "Forestland" means land on which forest trees occur.

(3) "Forest trees" means only those trees which are a part and constitute a stand of potential immature or mature commercial timber trees, provided that the term "forest trees" shall be deemed to include shade trees of any species around houses, along highways, and within cities and towns, if the same constitute insect and disease menaces to nearby timber trees or timber stands.

(4) "Infection" means attack by any disease affecting forest trees which is declared by the Secretary of Natural and Economic Resources to be dangerously injurious thereto.

(5) "Infestation" means attack by means of any insect, which is by the Secretary of Natural and Economic Resources declared to be dangerously injurious to forest trees. (1953, c. 910; 1973, c. 1262, s. 86.)

Editor's Note. — The 1973 amendment substituted "Secretary of Natural and Economic Resources" for "State Forester" in subdivisions (4) and (5).

§ 113-60.7. Action against insects and diseases. — Whenever the Secretary of Natural and Economic Resources, or his agent, determines that there exists an infestation of forest insect pests or an infection of forest tree diseases, injurious or potentially injurious to the timber or forest trees within the State of North Carolina, and that said infestation or infection is of such a character as to be a menace to the timber or forest growth of the State, the Secretary of Natural and Economic Resources shall declare the existence of a zone of infestation or infection and shall declare and fix boundaries so as to definitely describe and identify said zone of infestation or infection, and the Secretary of Natural and Economic Resources or his agent shall give notice in writing by mail or otherwise to each forest landowner within the designated control zone advising him of the nature of the infestation or infection, the recommended control measures, and offer him technical advice on methods of carrying out controls. (1953, c. 910; 1973, c. 1262, s. 86.)

Editor's Note. — The 1973 amendment substituted "Secretary of Natural and Economic Resources" for "State Forester."

§ 113-60.8. Authority of Secretary of Natural and Economic Resources and his agents to go upon private land within control zones. — The Secretary of Natural and Economic Resources or his agents shall have the power to go upon the land within any zone of infestation or infection and take measures to control, suppress or eradicate the insect, infestation or disease infection. If any

person refuses to allow the Secretary of Natural and Economic Resources or his agents to go upon his land, or if any person refuses to adopt adequate means to control or eradicate the insect, infestation or disease infection, the Secretary of Natural and Economic Resources may apply to the superior court of the county in which the land is located for an injunction or other appropriate remedy to restrain the landowner from interfering with the Secretary of Natural and Economic Resources or his agents in entering the control zone and adopting measures to control, suppress or eradicate the insect infestation or disease infection, provided the cost of court or control thereof shall not be a liability against the forest landowner nor constitute a lien upon the real property of such infested area. (1953, c. 910; 1973, c. 1262, s. 86.)

Editor's Note. — The 1973 amendment substituted "Secretary of Natural and Economic Resources" for "State Forester."

§ 113-60.9. Cooperative agreements. — In order to more effectively carry out the purposes of this Article, the Department of Natural and Economic Resources is hereby authorized to enter into cooperative agreements with the federal government and other public and private agencies, and with the owners of forestland. (1953, c. 910; 1973, c. 1262, s. 86.)

Editor's Note. — The 1973 amendment substituted "Department of Natural and Economic Resources" for "Department of Conservation and Development."

§ 113-60.10. Annulment of control zone. — Whenever the Secretary of Natural and Economic Resources determines that the forest insect or disease control work within a designated control zone is no longer necessary or feasible, then the Secretary of Natural and Economic Resources shall declare the zone of infestation or infection no longer pertinent to the purposes of this Article and such zone will then no longer be recognized. (1953, c. 910; 1973, c. 1262, s. 86.)

Editor's Note. — The 1973 amendment substituted "Secretary of Natural and Economic Resources" for "State Forester."

ARTICLE 4B.

Southeastern Interstate Forest Fire Protection Compact.

§ 113-60.11. Execution of Compact authorized; terms of Compact. — The legislature on behalf of this State is hereby authorized to execute a Compact, in substantially the following form, with any one or more of the States of Alabama, Florida, Georgia, Kentucky, Mississippi, South Carolina, Tennessee, Virginia, and West Virginia, and the legislature hereby signifies in advance its approval and ratification of such Compact:

SOUTHEASTERN INTERSTATE FOREST FIRE PROTECTION COMPACT

ARTICLE I.

The purpose of this Compact is to promote effective prevention and control of forest fires in the Southeastern region of the United States by the development of integrated forest fire plans, by the maintenance of adequate forest fire-fighting services by the member states, by providing for mutual aid in fighting forest fires among the compacting states of the region and with

states which are party to other regional forest fire protection compacts or agreements, and for more adequate forest protection.

Article II.

This Compact shall become operative immediately as to those states ratifying it whenever any two or more of the States of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, Virginia, and West Virginia, which are contiguous have ratified it and Congress has given consent thereto. Any state not mentioned in this Article which is contiguous with any member state may become a party to this Compact, subject to approval by the legislature of each of the member states.

Article III.

In each state, the state forester or officer holding the equivalent position who is responsible for forest fire control shall act as compact administrator for that state and shall consult with like officials of the other member states and shall implement cooperation between such states in forest fire prevention and control.

The compact administrators of the member states shall coordinate the services of the member states and provide administrative integration in carrying out the purposes of this Compact.

There shall be established an advisory committee of legislators, forestry commission representatives, and forestry or forest products industries representatives which shall meet from time to time with the compact administrators. Each member state shall name one member of the Senate and one member of the House of Representatives who shall be designated by that state's commission on interstate cooperation, or if said commission cannot constitutionally designate the said members, they shall be designated in accordance with laws of that state; and the governor of each member state shall appoint two representatives, one of whom shall be associated with forestry or forest products industries to comprise the membership of the advisory committee. Action shall be taken by a majority of the compacting states, and each state shall be entitled to one vote.

The compact administrators shall formulate and, in accordance with need, from time to time, revise a regional forest fire plan for the member states.

It shall be the duty of each member state to formulate and put in effect a forest fire plan for that state and take such measures as may be necessary to integrate such forest fire plan with the regional forest fire plan formulated by the compact administrators.

Article IV.

Whenever the state forest fire control agency of a member state requests aid from the state forest fire control agency of any other member state in combating, controlling or preventing forest fires, it shall be the duty of the state forest fire control agency of that state to render all possible aid to the requesting agency which is consonant with the maintenance of protection at home.

Article V.

Whenever the forces of any member state are rendering outside aid pursuant to the request of another member state under this Compact, the employees of such state shall, under the direction of the officers of the state to which they

are rendering aid, have the same powers (except the power of arrest), duties, rights, privileges and immunities as comparable employees of the state to which they are rendering aid.

No member state or its officers or employees rendering outside aid pursuant to this Compact shall be liable on account of any act or omission on the part of such forces while so engaged, on account of the maintenance, or use of any equipment or supplies in connection therewith: Provided, that nothing herein shall be construed as relieving any person from liability for his own negligent act or omission, or as imposing liability for such negligent act or omission upon any state.

All liability, except as otherwise provided hereinafter, that may arise either under the laws of the requesting state or under the laws of the aiding state or under the laws of a third state on account of or in connection with a request for aid, shall be assumed and borne by the requesting state.

Any member state rendering outside aid pursuant to this Compact shall be reimbursed by the member state receiving such aid for any loss or damage to, or expense incurred in the operation of any equipment answering a request for aid, and for the cost of all materials, transportation, wages, salaries, and subsistence of employees and maintenance of equipment incurred in connection with such request: Provided, that nothing herein contained shall prevent any assisting member state from assuming such loss, damage, expense or other cost or from loaning such equipment or from donating such service to the receiving member state without charge or cost.

Each member state shall provide for the payment of compensation and death benefits to injured employees and the representatives of deceased employees in case employees sustain injuries or are killed while rendering outside aid pursuant to this Compact, in the same manner and on the same terms as if the injury or death were sustained within such state.

For the purposes of this Compact the term employee shall include any volunteer or auxiliary legally included within the forest fire fighting forces of the aiding state under the laws thereof.

The compact administrators shall formulate procedures for claims and reimbursement under the provisions of this Article, in accordance with the laws of the member states.

Article VI.

Ratification of this Compact shall not be construed to affect any existing statute so as to authorize or permit curtailment or diminution of the forest fire fighting forces, equipment, services or facilities of any member state.

Nothing in this Compact shall be construed to limit or restrict the powers of any state ratifying the same to provide for the prevention, control and extinguishment of forest fires, or to prohibit the enactment or enforcement of state laws, rules or regulations intended to aid in such prevention, control and extinguishment in such state.

Nothing in this Compact shall be construed to affect any existing or future cooperative relationship or arrangement between any federal agency and a member state or states.

Article VII.

The compact administrators may request the United States Forest Service to act as a research and coordinating agency of the Southeastern Interstate Forest Fire Protection Compact in cooperation with the appropriate agencies in each state, and the United States Forest Service may accept responsibility for

preparing and presenting to the compact administrators its recommendations with respect to the regional fire plan. Representatives of any federal agency engaged in forest fire prevention and control may attend meetings of the compact administrators.

ARTICLE VIII.

The provisions of Articles IV and V of this Compact which relate to mutual aid in combating, controlling or preventing forest fires shall be operative as between any state party to this Compact and any other state which is party to a regional forest fire protection compact in another region: Provided, that the legislature of such other state shall have given its assent to such mutual aid provisions of this Compact.

ARTICLE IX.

The Compact shall continue in force and remain binding on each state ratifying it until the legislature or the governor of such state, as the laws of such state shall provide, takes action to withdraw therefrom. Such action shall not be effective until six months after notice thereof has been sent by the chief executive of the state desiring to withdraw to the chief executives of all states then parties to the Compact. (1955, c. 803, s. 1.)

§ 113-60.12. When Compact to become effective; authority of Governor. — When the legislature shall have executed said Compact on behalf of this State and shall have caused a verified copy thereof to be filed with the State Secretary, and when said Compact shall have been ratified by one or more of the states named in G.S. 113-60.11, then said Compact shall become operative and effective as between this State and such other state or states. The Governor is hereby authorized and directed to take such action as may be necessary to complete the exchange of official documents as between this State and any other state ratifying said Compact. (1955, c. 803, s. 2.)

§ 113-60.13. Assent of legislature to mutual aid provisions of other compacts. — The legislature of this State hereby gives its assent to the mutual aid provisions of Articles IV and V of the South Central Interstate Forest Fire Protection Compact in accordance with Article VIII of that Compact relating to interregional mutual aid; and the legislature of this State also hereby gives its assent to the mutual aid provisions of Articles IV and V of the Middle Atlantic Interstate Forest Fire Protection Compact in accordance with Article VIII of that Compact relating to interregional mutual aid. (1955, c. 803, s. 3.)

§ 113-60.14. Compact Administrator; North Carolina members of advisory committee. — The Secretary of Natural and Economic Resources is hereby designated as Compact Administrator for this State and shall consult with like officials of the other member states and shall implement cooperation between such states in forest fire prevention and control.

At some time before the adjournment of each regular session of the General Assembly, the Governor shall choose one person from the membership of the House of Representatives, and shall choose one person from the membership of the Senate, who shall serve on the advisory committee of the Southeastern Interstate Forest Fire Protection Compact as provided for in Article III of said Compact. At the time of the selection of the House and Senate members of such advisory committee, the Governor shall choose one alternate member from the House of Representatives and one from the Senate who shall serve on such

advisory committee in case of the death, absence or disability of the regular members so chosen. (1955, c. 803, s. 4; 1973, c. 1262, s. 86.)

Editor's Note. — The 1973 amendment substituted "Secretary of Natural and Economic Resources" for "State Forester."

§ 113-60.15. Agreements with noncompact states. — The Department of Natural and Economic Resources is hereby authorized to enter into written agreements with the State forest fire control agency of any other state or any province of Canada which is party to a regional forest fire protection compact. The provisions of any written agreement entered into pursuant to this Article shall be substantially in the form of the authority heretofore granted under the provisions of this Article, Southeastern Interstate Forest Fire Protection Compact. (1971, c. 1171; 1973, c. 1262, s. 28.)

Editor's Note. — The 1973 amendment substituted "Department of Natural and Economic Resources" for "North Carolina Forest Service, with the prior approval of the Board of Conservation and Development" near the beginning of the section.

ARTICLE 5.

Corporations for Protection and Development of Forests.

§ 113-61. Private limited dividend corporations may be formed. — Three or more persons, who associate themselves by an agreement in writing for the purpose, may become a private limited dividend corporation to finance and carry out projects for the protection and development of forests and for such other related purposes as the Secretary of Natural and Economic Resources shall approve, subject to all the duties, restrictions and liabilities, and possessing all the rights, powers, and privileges, of corporations organized under the general corporation laws of the State of North Carolina, except where such provisions are in conflict with this Article. (1933, c. 178, s. 1; 1973, c. 1262, s. 86.)

Cross Reference. — As to corporations generally, see § 55-1 et seq.

Editor's Note. — The 1973 amendment substituted "Secretary of Natural and Economic Resources" for "Director of the Department of Conservation and Development."

§ 113-62. Manner of organizing. — A corporation formed under this Article shall be organized and incorporated in the manner provided for organization of corporations under the general corporation laws of the State of North Carolina, except where such provisions are in conflict with this Article. The certificate of organization of any such corporation shall contain a statement that it is organized under the provisions of this Article and that it consents to be and shall be at all times subject to the rules, regulations and supervision of the Secretary of Natural and Economic Resources, and shall set forth as or among its purposes the protection and development of forests and the purchase, acquisition, sale, conveyance and other dealing in the same and the products therefrom, subject to the rules and regulations from time to time imposed by the Secretary of Natural and Economic Resources. (1933, c. 178, s. 2; 1973, c. 1262, s. 86.)

Editor's Note. — The 1973 amendment substituted "Secretary of Natural and Economic Resources" for "Director of the Department of Conservation and Development."

§ 113-63. Directors. — There shall not be less than three directors, one of whom shall always be a person designated by the Secretary of Natural and Economic Resources, which one need not be a stockholder. (1923, c. 178, s. 3; 1973, c. 1262, s. 86.)

Editor's Note. — The 1973 amendment substituted "Secretary of Natural and Economic Resources" for "Director of the Department of Conservation and Development."

§ 113-64. Duties of supervision by Secretary of Natural and Economic Resources. — Corporations formed under this Article shall be regulated by the Secretary of Natural and Economic Resources in the manner provided in this Article. Traveling and other expenses incurred by him in the discharge of the duties imposed upon him by this Article shall be charged to, and paid by, the particular corporation or corporations on account of which such expenses are incurred. His general expenses incurred in the discharge of such duties which cannot be fairly charged to any particular corporation or corporations shall be charged to, and paid by, all the corporations then organized and existing under this Article pro rata according to their respective stock capitalizations. The Secretary of Natural and Economic Resources shall:

(1) From time to time, amend and repeal rules and regulations for carrying into effect the provisions of this Article and for the protection and development of forests subject to its jurisdiction.

(2) Order all corporations organized under this Article to do such acts as may be necessary to comply with the provisions of law and the rules and regulations adopted by the Secretary of Natural and Economic Resources, or to refrain from doing any acts in violation thereof.

(3) Keep informed as to the general condition of all such corporations, their capitalization and the manner in which their property is permitted, operated or managed with respect to their compliance with all provisions of law and orders of the Secretary of Natural and Economic Resources.

(4) Require every such corporation to file with the Secretary of Natural and Economic Resources annual reports and, if the Secretary of Natural and Economic Resources shall consider it advisable, other periodic and special reports, setting forth such information as to its affairs as the Secretary of Natural and Economic Resources may require. (1933, c. 178, s. 4; 1973, c. 1262, s. 86.)

Editor's Note. — The 1973 amendment substituted "Secretary of Natural and Economic Resources" for "Director of the Department of Conservation and Development."

§ 113-65. Powers of Secretary. — The Secretary of Natural and Economic Resources may:

(1) Examine at any time all books, contracts, records, documents and papers of any such corporation.

(2) In his discretion prescribe uniform methods and forms of keeping accounts, records and books to be observed by such corporation, and prescribe by order accounts in which particular outlays and receipts are to be entered, charged or credited. The Secretary of Natural and Economic Resources shall not, however, have authority to require any revaluation of the real property or other fixed assets of such corporations, but he shall allow proper charges for the depletion of timber due to cutting or destruction.

(3) Enforce the provisions of this Article and his orders, rules and regulations thereunder by filing a petition for a writ of mandamus or

application for an injunction in the superior court of the county in which the respondent corporation has its principal place of business. The final judgment in any such proceeding shall either dismiss the proceeding or direct that a writ of mandamus or an injunction, or both, issue as prayed for in the petition or in such modified or other form as the court may determine will afford appropriate relief. (1933, c. 178, s. 5; 1973, c. 1262, s. 86.)

Editor's Note. — The 1973 amendment substituted "Secretary of Natural and Economic Resources" for "Director of the Department of Conservation and Development" in the introductory language and in subdivision (2).

§ 113-66. Provision for appeal by corporations to Governor. — If any corporation organized under this Article is dissatisfied with or aggrieved at any regulation, rule or order imposed upon it by the Secretary of Natural and Economic Resources, or any valuation or appraisal of any of its property made by the Secretary of Natural and Economic Resources, or any failure of or refusal by the Secretary of Natural and Economic Resources to approve of or consent to any action which it can take only with such approval or consent, it may appeal to the Governor by filing with him a claim of appeal upon which the decision of the Governor shall be final. Such determination, if other than a dismissal of the appeal, shall be set forth by the Governor in a written mandate to the Secretary of Natural and Economic Resources, who shall abide thereby and take such action as the same may direct. (1933, c. 178, s. 6; 1973, c. 1262, s. 86.)

Editor's Note. — The 1973 amendment substituted "Secretary of Natural and Economic Resources" for "Director of the Department of Conservation and Development."

§ 113-67. Limitations as to dividends. — The shares of stock of corporations organized under this Article shall have a par value and, except as provided in G.S. 113-69 in respect to distributions in kind upon dissolution, no dividend shall be paid thereon at a rate in excess of six per centum (6%) per annum on stock having a preference as to dividends, or eight per centum (8%) per annum on stock not having a preference as to dividends, except that any such dividends may be cumulative without interest. (1933, c. 178, s. 7.)

§ 113-68. Issuance of securities restricted. — No such corporation shall issue stock, bonds or other securities except for money, timberlands, or interests therein, located in the State of North Carolina or other property, actually received, or services rendered, for its use and its lawful purposes. Timberlands, or interests therein, and other property or services so accepted therefor, shall be upon a valuation approved by the Secretary of Natural and Economic Resources. (1933, c. 178, s. 8; 1973, c. 1262, s. 86.)

Editor's Note. — The 1973 amendment substituted "Secretary of Natural and Economic Resources" for "Director of the Department of Conservation and Development."

§ 113-69. Limitation on bounties to stockholders. — Stockholders shall at no time receive or accept from any such corporation in repayment of their investment in its stock any sums in excess of the par value of the stock together with cumulative dividends at the rate set forth in G.S. 113-67 except that nothing in this section contained shall be construed to prohibit the distribution of the assets of such corporation in kind to its stockholders upon dissolution thereof. (1933, c. 178, s. 9.)

§ 113-70. Earnings above dividend requirements payable to State. — Any earnings of such corporation in excess of the amounts necessary to pay dividends to stockholders at the rate set forth in G.S. 113-67 shall be paid over to the State of North Carolina prior to the dissolution of such corporation. Net income or net losses (determined in such manner as the Secretary of Natural and Economic Resources shall consider properly to show such income or losses) from the sale of the capital assets of such corporation, whether such sale be upon dissolution or otherwise, shall be considered in determining the earnings of such corporation for the purposes of this section. In determining such earnings unrealized appreciation or depreciation of real estate or other fixed assets shall not be considered. (1933, c. 178, s. 10; 1973, c. 1262, s. 86.)

Editor's Note. — The 1973 amendment substituted "Secretary of Natural and Economic Resources" for "Director of the Department of Conservation and Development."

§ 113-71. Dissolution of corporation. — Any such corporation may be dissolved at any time in the manner provided by and under the provisions of the general corporation laws of the State of North Carolina, except that the court shall dismiss any petition for dissolution of any such corporation filed within 20 years of the date of its organization unless the same is accompanied by a certificate of the Secretary of Natural and Economic Resources consenting to such dissolution. (1933, c. 178, s. 11; 1973, c. 1262, s. 86.)

Editor's Note. — The 1973 amendment substituted "Secretary of Natural and Economic Resources" for "Director of the Department of Conservation and Development."

§ 113-72. Cutting and sale of timber. — Any such corporation may cut and sell the timber on its lands or permit the cutting thereof, but all such cuttings shall be in accordance with the regulations, restrictions and limitations imposed by the Secretary of Natural and Economic Resources, who shall impose such regulations, restrictions and limitations with respect thereto as may reasonably conform to the accepted custom and usage of good forestry and forest economy, taking into consideration the situation, nature and condition of the tract so cut or to be cut, and the financial needs of such corporation from time to time. (1933, c. 178, s. 12; 1973, c. 1262, s. 86.)

Editor's Note. — The 1973 amendment substituted "Secretary of Natural and Economic Resources" for "Director of the Department of Conservation and Development."

§ 113-73. Corporation may not sell or convey without consent of Secretary, or pay higher interest rate than 6%. — No such corporation shall:

(1) Sell, assign or convey any real property owned by it or any right, title or interest therein, except upon notice to the Secretary of Natural and Economic Resources of the terms of such sale, transfer or assignment, and unless the Secretary of Natural and Economic Resources shall consent thereto, and if the Secretary of Natural and Economic Resources shall require it, unless the purchaser thereof shall agree that such real estate shall remain subject to the regulations and supervision of the Secretary of Natural and Economic Resources for such period as the latter may require;

(2) Pay interest returns on its mortgage indebtedness at a higher rate than six per centum (6%) per annum without the consent of the Secretary of Natural and Economic Resources;

(3) Mortgage any real property without first having obtained the consent of the Secretary of Natural and Economic Resources. (1933, c. 178, s. 13; 1973, c. 1262, s. 86.)

Editor's Note. — The 1973 amendment substituted "Secretary of Natural and Economic Resources" for "Director of the Department of Conservation and Development."

§ 113-74. Power to borrow money limited. — Any such corporation formed under this Article may, subject to the approval of the Secretary of Natural and Economic Resources, borrow funds and secure their payment thereof by note or notes and mortgage or by the issue of bonds under a trust indenture. The notes or bonds so issued and secured and the mortgage or trust indenture relating thereto may contain such clauses and provisions as shall be approved by the Secretary of Natural and Economic Resources, including the right to enter into possession in case of default; but the operations of the mortgagee or receiver entering in such event or of the purchaser of the property upon foreclosure shall be subject to the regulations of the Secretary of Natural and Economic Resources for such period as the mortgage or trust indenture may specify. (1933, c. 178, s. 14; 1973, c. 1262, s. 86.)

Editor's Note. — The 1973 amendment substituted "Secretary of Natural and Economic Resources" for "Director of the Department of Conservation and Development."

§ 113-75. Secretary to approve development of forests. — No project for the protection and development of forests proposed by any such corporation shall be undertaken without the approval of the Secretary of Natural and Economic Resources, and such approval shall not be given unless:

(1) The Secretary of Natural and Economic Resources shall have received a statement duly executed and acknowledged on behalf of the corporation proposing such project, in such adequate detail as the Secretary of Natural and Economic Resources shall require of the activities to be included in the project, such statement to set forth the proposals as to
   a. Fire prevention and protection,
   b. Protection against insects and tree diseases,
   c. Protection against damage by livestock and game,
   d. Means, methods and rate of, and restrictions upon, cutting and other utilization of the forests, and
   e. Planting and spacing of trees.

(2) There shall be submitted to the Secretary of Natural and Economic Resources a financial plan satisfactory to him setting forth in detail the amount of money needed to carry out the entire project, and how such sums are to be allocated, with adequate assurances to the Secretary of Natural and Economic Resources as to where such funds are to be secured.

(3) The Secretary of Natural and Economic Resources shall be satisfied that the project gives reasonable assurance of the operation of the forests involved on a sustained-yield basis except insofar as the Secretary of Natural and Economic Resources shall consider the same impracticable.

(4) The corporation proposing such project shall agree that the project shall at all times be subject to the supervision and inspection of the Secretary of Natural and Economic Resources, and that it will at all times comply with such rules and regulations concerning the project as the Secretary of Natural and Economic Resources shall from time to time impose. (1933, c. 178, s. 15; 1973, c. 1262, s. 86.)

Editor's Note. — The 1973 amendment substituted "Secretary of Natural and Economic Resources" for "Director of the Department of Conservation and Development."

§ 113-76. Application of corporate income. — The gross annual income of any such corporation, whether received from sales of timber, timber operations, stumpage permits or other sources, shall be applied as follows: first, to the payment of all fixed charges, and all operating and maintenance charges and expenses including taxes, assessments, insurance, amortization charges in amounts approved by the Secretary of Natural and Economic Resources to amortize mortgage or other indebtedness and reserves essential to operation; second, to surplus, and/or to the payment of dividends not exceeding the maximum fixed by this Article; third, the balance, if any, in reduction of debts. (1933, c. 178, s. 16; 1973, c. 1262, s. 86.)

Editor's Note. — The 1973 amendment substituted "Secretary of Natural and Economic Resources" for "Director of the Department of Conservation and Development."

§ 113-77. Reorganization of corporations. — Reorganization of corporations organized under this Article shall be subject to the supervision of the Secretary of Natural and Economic Resources and no such reorganization shall be had without the authorization of the Secretary of Natural and Economic Resources. (1933, c. 178, s. 17; 1973, c. 1262, s. 86.)

Editor's Note. — The 1973 amendment substituted "Secretary of Natural and Economic Resources" for "Director of the Department of Conservation and Development."

ARTICLE 6.

Fishing Generally.

§ 113-78. Fishing in lakes partially in another state. — (a) Notwithstanding any other provision of law, or any rule or regulation of the North Carolina Wildlife Commission, it shall be lawful for any person who is a resident of a state adjoining North Carolina and who has in his possession a current valid fishing license issued by the state of his residence to fish in any lake or impoundment of water which lies partially in his state of residence and partially in this State.

(b) This section shall apply only to lakes and impoundments of water lying partially in this State and a state adjoining this State.

(c) This section shall apply only to persons fishing from boats.

(d) This section shall apply only to residents of a state which extends similar privileges to residents of North Carolina fishing in such state. (1971, c. 131, ss. 1-4.)

§§ 113-79 to 113-81: Repealed by Session Laws 1947, c. 422, ss. 1, 9.

ARTICLE 6A.

Forestry Services and Advice for Owners and Operators of Forestland.

§ 113-81.1. Authority to render scientific forestry services. — The Department of Natural and Economic Resources is hereby authorized to designate, upon request, forest trees of forest landowners and forest operators for sale or removal, by blazing or otherwise, and to measure or estimate the volume of same under the terms and conditions hereinafter provided. The Department is also authorized to cooperate with landowners of the State and with counties, municipalities and State agencies by making available forestry

services consisting of specialized equipment and operators, or by renting such equipment, and to perform such labor and services as may be necessary to carry out approved forestry practices, including site preparation, forest planting, prescribed burning, and other appropriate forestry practices. For such services or rentals, a reasonable fee representing the Secretary of Natural and Economic Resources' estimate of not less than the costs of such services or rentals shall be charged, provided however, when the Secretary of Natural and Economic Resources deems it in the public interest, said services may be provided without charge, for the purpose of encouraging the use of approved scientific forestry practice on the private or other forestlands within the State, or for the purpose of providing practical demonstrations of said practices. Receipts from these activities and rentals shall be credited to the budget of the Department of Natural and Economic Resources for the furtherance of these activities. (1947, c. 384, s. 1; 1969, c. 342, s. 3; c. 344; 1973, c. 1262, ss. 28, 86.)

Editor's Note. — The 1973 amendment substituted "Department of Natural and Economic Resources" for "North Carolina Department of Conservation and Development" in the first sentence, substituted "Secretary of Natural and Economic Resources' " for "State Forester's" and "Secretary of Natural and Economic Resources" for "State Forester and the Board of Conservation and Development" in the third sentence and substituted "Department of Natural and Economic Resources" for "Department of Conservation and Development, North Carolina Forest Service" in the last sentence.

§ 113-81.2. Services under direction of Secretary of Natural and Economic Resources; compensation; when services without charge. — The administration of the provisions of this Article shall be under the direction of the Secretary of Natural and Economic Resources. The Secretary of Natural and Economic Resources, or his authorized agent, upon receipt of a request from a forest landowner or operator for technical forestry assistance or service, may designate forest trees for removal for lumber, veneer, poles, piling, pulpwood, cordwood, ties, or other forest products by blazing, spotting with paint or otherwise designating in an approved manner; he may measure or estimate the commercial volume contained in the trees designated; he may furnish the landowner or operator with a statement of the volume of the trees so designated and estimated; he may assist in finding a suitable market for the products so designated, and he may offer general forestry advice concerning the management of the forest.

For such designating, measuring or estimating services the Secretary of Natural and Economic Resources may make a charge, on behalf of the Department of Natural and Economic Resources, in an amount not to exceed five percent (5%) of the sale price or fair market value of the stumpage so designated and measured or estimated. Upon receipt from the Secretary of Natural and Economic Resources of a statement of such charges, the landowner or operator or his agent shall make payment to the Secretary of Natural and Economic Resources within 30 days.

In those cases where the Secretary of Natural and Economic Resources deems it desirable to so designate and measure or estimate trees without charge, such services shall be given for the purpose of encouraging the use of approved scientific forestry principles on the private or other forestlands within the State, and to establish practical demonstrations of said principles. (1947, c. 384, s. 2; 1973, c. 1262, s. 86.)

Editor's Note. — The 1973 amendment substituted "Secretary of Natural and Economic Resources" for "State Forester" and "Department of Natural and Economic Resources" for "Department of Conservation and Development."

§ 113-81.3. Deposit of receipts with State treasury. — All moneys paid to the Secretary of Natural and Economic Resources for services rendered under the provisions of this Article shall be deposited into the State treasury to the credit of the Department of Natural and Economic Resources. (1947, c. 384, s. 3; 1973, c. 1262, s. 86.)

Editor's Note. — The 1973 amendment substituted "Secretary of Natural and Economic Resources" for "State Forester" and "Department of Natural and Economic Resources" for "Department of Conservation and Development."

SUBCHAPTER IIA. DISTRIBUTION AND SALE OF HUNTING, FISHING AND TRAPPING LICENSES.

ARTICLE 6B.

License Agents.

§ 113-81.4. Purpose of Article. — The purpose of this Article is to relieve wildlife protectors of responsibility for the distribution of hunting, fishing, and trapping licenses, to establish procedures whereby such licenses shall be issued directly to hunting and fishing license agents, and to provide for strict accountability for all licenses so issued and the proceeds from the sale thereof. (1961, c. 352, s. 1.)

§ 113-81.5. Definitions. — When used in this Article:

(1) The word "Wildlife Resources Commission" or the phrase "Wildlife Resources Commission" means the North Carolina Wildlife Resources Commission.

(2) The words "Executive Director" mean the Executive Director of the North Carolina Wildlife Resources Commission.

(3) The words "license agent" or "hunting and fishing license agent," or "State hunting and fishing license agent" mean any person, firm or corporation who or which is authorized by the Wildlife Resources Commission to sell hunting and fishing licenses as herein defined.

(4) The word "licenses" and the phrase "hunting and fishing licenses" shall be construed to include:

a. State resident hunting licenses;
b. County resident hunting licenses;
c. Nonresident hunting licenses;
d. Combination hunting and fishing licenses;
e. State resident fishing licenses;
f. County resident fishing licenses;
g. Resident daily fishing permits;
h. Nonresident season fishing licenses;
i. Nonresident five-day fishing licenses;
j. Nonresident daily fishing licenses;
k. Resident special trout-fishing licenses;
l. Nonresident special trout-fishing licenses;
m. State resident trapping licenses;
n. County resident trapping licenses;
o. Nonresident trapping licenses; and
p. Special-device fishing licenses and special permits for hunting and fishing on wildlife management areas where the same may, in the discretion of the Executive Director, be consigned to State hunting and fishing license agents. (1961, c. 352, s. 2; 1973, c. 1262, s. 18.)

Editor's Note. — The 1973 amendment inserted "Wildlife Resources" preceding "Commission" the first time the word appears in subdivision (1).

§ 113-81.6. Duty of Wildlife Resources Commission. — The Wildlife Resources Commission is hereby authorized and directed to relieve all wildlife protectors of responsibility for the distribution of licenses to license agents and of accountability for the proceeds of the sale thereof as soon as may be practicable after July 1, 1962; provided, however, the Wildlife Resources Commission may require the services of any wildlife protector for the purpose of implementing the provisions of this Article, for purposes of investigation and inspection of any hunting and fishing license agent or any applicant for the position of hunting and fishing license agent, and for the purpose of delivering licenses to any agent in any case of emergency. (1961, c. 352, s. 3; 1973, c. 1262, s. 18.)

Editor's Note. — The 1973 amendment substituted "Wildlife Resources Commission" for "Commission" in the proviso.

§ 113-81.7. Authority of the Commission. — The Wildlife Resources Commission is hereby authorized and empowered:

(1) To appoint qualified persons, firms, or corporations to the position of State hunting and fishing license agent.

(2) To promulgate, publish, disseminate, and enforce regulations, not inconsistent with this Article, to govern the distribution and sale of hunting and fishing licenses and to require strict accounting for unsold licenses and the proceeds of sold licenses.

(3) To fix minimum standards, in addition to the requirements of this Article, regulating the qualifications of State hunting and fishing license agents, the location and type of places of business at which licenses may be sold, and the facilities provided for the safekeeping of licenses and the proceeds thereof.

(4) To prescribe procedures whereby any hunting and fishing license agent may be relieved of accountability for unsold licenses or the proceeds of sold licenses which may be lost or destroyed due to causes beyond the control of such agent. (1961, c. 352, s. 4.)

§ 113-81.8. Duties of Executive Director of Wildlife Resources Commission. — The Executive Director of the Wildlife Resources Commission shall:

(1) Assist the Wildlife Resources Commission with such investigation of applicants for the position of hunting and fishing license agent as may be necessary to determine whether they meet the requirements of this Article and such additional standards as may be fixed by the Wildlife Resources Commission.

(2) Require periodic inspections of the books and records of all State hunting and fishing license agents for the purpose of ascertaining that the provisions of this Article and the regulations promulgated hereunder are being complied with.

(3) Dismiss any hunting and fishing license agent who fails to comply with the terms and spirit of this Article or the regulations promulgated hereunder.

(4) Prepare and distribute all forms of hunting and fishing licenses and all forms necessary for accurate reporting of license sales and accounting for unsold licenses and the proceeds of sold licenses.

(5) Relieve any hunting and fishing license agent, subject to the regulations of the Wildlife Resources Commission, of accountability for unsold licenses or the proceeds of sold licenses when it has been made to appear to his satisfaction that such licenses or the proceeds from the

sale thereof have become lost or destroyed by reason of a cause or causes beyond the control of such agent. (1961, c. 352, s. 5; 1973, c. 1262, s. 18.)

Editor's Note. — The 1973 amendment substituted "Wildlife Resources Commission" for "Commission" in subdivisions (1) and (5).

§ 113-81.9. Qualifications of license agents. — In addition to such minimum standards as may be fixed by the Wildlife Resources Commission, applicants for appointment as State hunting and fishing license agent shall be required to produce satisfactory evidence of their financial responsibility. No person, firm or corporation shall be appointed as a hunting and fishing license agent unless the character, reputation, and capabilities of the applicant, by whatever means ascertainable, are such as to convince the Wildlife Resources Commission that such applicant may safely be permitted to handle public funds. (1961, c. 352, s. 6; 1973, c. 1262, s. 18.)

Editor's Note. — The 1973 amendment substituted "Wildlife Resources Commission" for "Commission."

§ 113-81.10. Bond required of agents. — Every State hunting and fishing license agent shall, before receiving licenses, give a bond in the amount of two thousand dollars ($2,000) payable to the State of North Carolina and conditioned upon a true and prompt accounting for all public moneys received from the sale of hunting and fishing licenses, for all licenses received but remaining unsold, and for the face value of all licenses received but remaining unaccounted for. Such bond may be a blanket bond with corporate surety selected by the Executive Director. Any public official who is required to post an official bond, which in the judgment of the Executive Director is sufficient to protect the State against losses of licenses and license proceeds, may be authorized to sell hunting and fishing licenses without giving the bond required by this section. (1961, c. 352, s. 7.)

§ 113-81.11. Duties of license agents. — Each State hunting and fishing license agent shall:

(1) Keep accurate records in such manner and form as may be prescribed by the Wildlife Resources Commission of all licenses received, sold, and remaining unsold, and of all public moneys received from the sale of licenses.

(2) Keep all public funds received from the sale of licenses separate and apart from personal or other business funds.

(3) Permit inspection and audit of all hunting and fishing license records by any authorized officer or employee of the Wildlife Resources Commission at any time during business hours.

(4) Render a report to the Wildlife Resources Commission on or before the tenth day of each month during the accounting periods for the types of licenses being sold to include all licenses sold during the preceding calendar month, such report to be accompanied by the stubs and/or carbon copies of all sold licenses and a check or money order for the public funds received from said sales.

(5) Render a final report on or before the fifteenth day of January of each year showing all fishing licenses sold but previously unreported, together with the stubs and/or carbon copies of such licenses and a

check or money order for the public funds received from said sales, and, in addition, all fishing licenses received but then remaining unsold.

(6) Render a final report on or before the first day of March of each year showing all hunting, trapping, and combination hunting and fishing licenses sold but previously unreported, together with a check or money order for all public funds received from said sales and the stubs and/or carbon copies of all sold licenses, and, in addition, all such licenses received but then remaining unsold; provided, however, those hunting and fishing license agents who are operators of licensed "controlled shooting preserves" shall have until not later than the fifteenth day of April of each year to make the final report required by this subdivision. (1961, c. 352, s. 8; 1973, c. 1262, s. 18.)

Editor's Note. — The 1973 amendment substituted "Wildlife Resources Commission" for "Commission" in subdivisions (1), (3) and (4).

§ 113-81.12. Penalties; dismissal of agents. — (a) The failure of any State hunting and fishing license agent to perform any of the duties set forth in the preceding section [G.S. 113-81.11], or failure to comply with any regulation adopted pursuant to this Article, shall be cause for immediate dismissal of such agent.

(b) The willful violation of any provision of this Article, or of any regulation promulgated pursuant thereto, shall constitute a misdemeanor.

(c) The willful failure or refusal of any hunting and fishing license agent to pay over to the proper authority all public funds received by him from the sale of licenses within the times fixed by this Article shall constitute a misdemeanor, and each day's continuance of such willful failure or refusal shall constitute a separate offense.

(d) The dismissal of any hunting and fishing license agent, or the conviction or acquittal of any license agent of a criminal offense under this Article, shall not operate to extinguish any liability under his bond for failure to account for public funds received from the sale of licenses or for the face value of unsold licenses which remain unaccounted for.

(e) When a check or draft of any license agent remitting public funds for sold licenses shall be returned by the banking facility upon which the same is drawn for lack of funds, such license agent shall be liable for a penalty of five percent (5%) of the amount of such check or draft to the Wildlife Resources Commission, but in no event shall such penalty be less than one dollar ($1.00) or more than two hundred dollars ($200.00). (1961, c. 352, s. 9.)

§ 113-81.13. Repealer. — This Article shall be construed as an amendment to the existing law to the extent that it may conflict therewith, but this Article shall not be construed to modify any existing statutory license requirement for engaging in hunting, fishing, trapping, or any other activity for which a license or permit is now required; or to change any of the existing license fees, or fees now allowed by statute to the agents issuing licenses; nor shall it modify the existing statutory requirements and restrictions as to the purposes for which the various license fees may be expended. (1961, c. 352, s. 11.)

SUBCHAPTER III. GAME LAWS.

ARTICLE 7.

North Carolina Game Law of 1935.

§ 113-82. Title of Article. — This Article shall be known by the short title of "The North Carolina Game Law." (1935, c. 486, s. 1.)

Local Modification. — Currituck: 1935, c. 160.

Cross Reference. — For Wildlife Resources Law, see § 143-237 et seq.

§ 113-83. Definitions. — For the purpose of this Article the following shall be construed, respectively, to mean:

Closed season — The time during which birds or animals may not be taken.

Common carrier — Railroad companies, boat lines, express companies, bus lines, and any person transporting persons or property for hire.

Executive Director — Executive Director of the North Carolina Wildlife Resources Commission.

Fur-bearing animals — Skunk, muskrat, raccoon, opossum, beaver, mink, otter and wildcat.

Game — All game animals and game birds.

Game animals — Deer, bear, fox, squirrels, rabbits, and wild boar.

Migratory wild waterfowl — Anatidae or waterfowl, including brant, wild duck, geese and swans; migratory wild birds, gruiae or cranes, including little brown, sandhill, and whooping cranes; rallidae, or rails, including coots, gallinules, sora, and other rails; limicolae, or shore birds, including avocets, curlew, dowitchers, godwits, knots, oyster catchers, phalaropes, sandpipers, snipes, stilts, surf birds, turnstones, willet, woodcock, and yellow legs; columbidae or pigeons, including doves and wild pigeons.

Nongame animals — All wild animals except game and fur-bearing animals.

Nongame birds — All wild birds except upland game birds and migratory game birds.

Open season — The time during which birds or animals may be lawfully taken. Each period of time prescribed as an open season shall be construed to include the first and last days thereof.

Person — The plural or singular as the case demands, including individuals, associations, partnerships, and corporations, unless the context otherwise requires.

Take — Whenever it is made lawful to "take" birds or animals, or parts thereof, or birds' nests or eggs, it shall mean the pursuit, hunting, capture or killing of birds or animals, or collecting of birds' nests or eggs in the manner, at the time, and by means specifically permitted. Whenever it is made unlawful to "take" birds or animals or parts thereof, or birds' nests or eggs, the word "take" shall include pursuing, shooting, hunting, killing, capturing, trapping, snaring, and netting birds or animals, collecting birds' nests or eggs, and all lesser acts, such as disturbing or annoying birds or animals, or placing or using any net or other device for the purpose of taking birds or animals, whether or not they result in the taking of such birds or animals.

Transport — Shipping, transporting, carrying, importing, exporting, receiving or delivering for shipment, transportation, carriage or export.

Upland game birds — Quail, commonly known as bobwhite or partridge, wild turkey, grouse, and pheasants of all kinds.

Wildlife Resources Commission — Wildlife Resources Commission. (1935, c. 486, s. 2; 1953, c. 304; 1973, c. 1262, s. 18.)

Editor's Note. — The 1973 amendment deleted "Board — Board of Conservation and Development" and "Commissioner — Commissioner of Game and Inland Fisheries" and inserted "Wildlife Resources Commission — Wildlife Resources Commission" and "Executive Director — Executive Director of the North Carolina Wildlife Resources Commission."

Applied in State v. Lassiter, 13 N.C. App. 292, 185 S.E.2d 478 (1971); State v. Link, 13 N.C. App. 568, 186 S.E.2d 634 (1972).

Stated in State v. Lassiter, 9 N.C. App. 255, 175 S.E.2d 689 (1970).

§ 113-84. Powers and duties of the Wildlife Resources Commission. — It shall be unlawful to take or pursue any of the wildlife of the State at any time or in any manner, except at such times and in such manner as the supply of said wildlife may justify, and the said Wildlife Resources Commission is hereby directed to make adequate investigations as to the said supply and thereupon shall, by appropriate rules and regulations:

(1) Fix seasons and bag limits or close seasons on any species of game, bullfrogs, bird, or fur-bearing animal, in any specified locality or localities, or the entire State, when it shall find, after said investigation, that such action is necessary to assure the maintenance of an adequate supply thereof. The statutes now governing such subjects shall continue in full force and effect, except as altered or modified by rules and regulations promulgated by the Wildlife Resources Commission.

(2) Fix seasons and bag limits or close season on any species, age, size or sex of deer in any specified locality or localities, or the entire State, when it shall find, after said investigation and after a public hearing held by the Wildlife Resources Commission in the area to be affected when determining the advisability of an open season on doe deer, that such action is necessary to assure the maintenance of an adequate and balanced supply thereof. Provided, however, that in any locality where the use of rifles is permitted for the taking of deer, the Wildlife Resources Commission shall be authorized to fix an open season on doe deer on any day or at any time concurrent with the open season on male deer. This provision shall apply only to the Counties of Burke, Caldwell, Rutherford, Surry, Wilkes and counties lying west of the same. Where the number of eligible hunters exceeds the number of doe deer to be harvested as determined by the Wildlife Resources Commission, the Wildlife Resources Commission shall establish some system of issuing permits in order to regulate the harvest of doe deer.

(3) Establish and close to hunting or trapping game or bird refuges on public lands and, with the consent of the owner, on private lands; and close streams and lakes, or parts thereof to hunting or trapping.

(4) Acquire by purchase, grant, condemnation, lease, agreement, gift, or devise lands or water suitable for the purposes hereinafter enumerated, and develop, operate and maintain the same for said purposes:
   a. Game farms or game refuges.
   b. Lands or waters suitable for game, bird or fur-bearing animal restoration, propagation or protection.
   c. For public hunting or trapping areas to provide places where the public may hunt or trap in accordance with the provisions of law or the regulations of the Wildlife Resources Commission.
   d. To extend and consolidate by exchange lands or waters suitable for the above purposes.
   e. To capture, propagate, transport, buy, sell, or exchange any species of game, bird or fur-bearing animal, needed for propagation or stocking purposes, or to exercise control measures of undesirable species.

(5) Enter into cooperative agreements with educational institutions and State, federal or other agencies, to promote wildlife research and to train men for wildlife management.

(6) Enter into cooperative agreements with federal agencies, municipalities, corporations, organized groups of landowners, associations and individuals, for the development of game, bird or fur-bearing animal management and demonstration projects.

(7) The North Carolina Wildlife Resources Commission is hereby authorized, by appropriate rules and regulations, to license the operation of controlled shooting preserves and revoke such licenses for cause. "Controlled shooting preserve" means an area on which only domestically raised game birds are taken. For each calendar year or part thereof during which any licensee operates, said licensee shall pay to the Wildlife Resources Commission an annual license fee of fifty dollars ($50.00), and such annual license shall be issued only upon the payment of said fifty dollars ($50.00).

(8) The North Carolina Wildlife Resources Commission is hereby authorized, by appropriate rules and regulations, to fix seasons and bag limits for domestically raised native, nonnative and hybrid species of game birds taken on licensed controlled shooting preserves, which seasons and bag limits are not required to be the same as for game birds which are not domestically raised. (1935, c. 486, s. 4; 1957, cc. 386, 841; 1961, cc. 311, 1056; 1973, c. 1262, s. 18.)

Local Modification. — Pender, as to subdivision (2): 1957, c. 386, s. $2^1/_2$.

Editor's Note. — The 1973 amendment substituted "Wildlife Resources Commission" for "Board" in the introductory paragraph and in subdivision (1), for "Commission" in the first and last sentences of subdivision (2) and for "Board" in paragraph c of subdivision (4).

State Government Reorganization. — The Wildlife Resources Commission was transferred to the Department of Natural and Economic Resources by former § 143A-118, enacted by Session Laws 1971, c. 864.

Power to Acquire Land for Game Farms or Game Refuges. — The Wildlife Resources Commission has been delegated the power to acquire land for game farms or game refuges in the public interest under this section and § 143-237 et seq., but the public need for such project in a particular locality must first be established by a certificate of public convenience and necessity from the North Carolina Utilities Commission under § 40-53. State ex rel. North Carolina Util. Comm'n v. Story, 241 N.C. 103, 84 S.E.2d 386 (1954).

§ 113-85. Limitations on powers. — Nothing in this Article, however, shall be construed to authorize the Wildlife Resources Commission to change any penalty prescribed by law for a violation of its provisions, or to change the amount of license fees or the authority conferred by licenses prescribed by law. (1935, c. 486, s. 4; 1973, c. 1262, s. 18.)

Editor's Note. — The 1973 amendment substituted "Wildlife Resources Commission" for "Board."

§ 113-86. Organization of work. — The Wildlife Resources Commission shall establish such departmental bureaus or divisions and shall authorize the Executive Director to employ such experts, clerks, or other employees as it may deem necessary for the conduct of the work of the Wildlife Resources Commission, and it shall fix their salaries or other compensation, which shall be paid out of the game and fish fund. The Wildlife Resources Commission shall authorize such scientific and other studies as may be deemed necessary to its work, and shall collect, classify and disseminate such statistics, data and

information as in its discretion will tend to promote the objects of this Article. (1935, c. 486, s. 4; 1973, c. 1262, s. 18.)

Editor's Note. — The 1973 amendment substituted "Board" and "Executive Director" for "Wildlife Resources Commission" for "Commissioner."

§ 113-87. Permits to kill game injurious to agriculture. — The Wildlife Resources Commission shall have power to issue permits to kill any species of birds or animals which may become seriously injurious to agriculture or other interests in any particular community, or such birds or animals may be captured alive by it or under its discretion and planted in other sections of the State for restocking, or may be disposed of in such other manner as it may determine: Provided, that birds and animals committing depredations may be taken at any time without a permit while committing, or about to commit, such depredations; provided, further, it shall be unlawful to kill a bear unless the same is in the act of committing depredations and nothing contained herein shall authorize the hunting of any bear with dogs during the closed season thereon. Any permit issued pursuant to this section shall expire within four months after the date of issuance. (1935, c. 486, s. 4; 1971, c. 423, s. 2; c. 809, s. 1; 1973, c. 1262, s. 18.)

Editor's Note. — The 1973 amendment substituted "Wildlife Resources Commission" for "Board."

§ 113-88. Publication of rules and regulations of Wildlife Resources Commission. — Rules, regulations and orders of the Wildlife Resources Commission shall be published in the following manner: Those having general application throughout the State shall be published at least once in some newspaper published in and having general circulation throughout the State and at each county courthouse door; those of special character having local application only shall be published at least once in some newspaper published in and having general circulation in the locality wherein such rules, regulations and orders are applicable and at the county courthouse door; but, if no such newspaper is so published and circulated, copies of such rules, regulations and orders shall be posted in at least three conspicuous places in the locality in which they are applicable and at the county courthouse door. Such rules, regulations and orders may also be given such other publicity as the Wildlife Resources Commission may deem desirable. (1935, c. 486, s. 5; 1973, c. 1262, s. 18.)

Editor's Note. — The 1973 amendment substituted "Wildlife Resources Commission" for "Board."

§ 113-89. County game commissions. — This Article shall not be construed to dissolve any game commissions now existing in the several counties, nor to prohibit the creation of game commissions in the several counties and such commissions now existing and such as may be created shall exist, but supervision of the provisions of this Article and the direction of the policies and administration of this Article and other laws which may exist for the same purpose as this shall be vested in and abide with the Wildlife Resources Commission and the powers of such county commissions as may exist or may be created shall be of a nature advisory and recommendatory to the Wildlife Resources Commission and the exercise of any powers by them shall require the approval of the Wildlife Resources Commission. (1935, c. 486, s. 6; 1973, c. 1262, s. 18.)

Editor's Note. — The 1973 amendment substituted "Wildlife Resources Commission" for "Board" and for "Board of Conservation and Development."

§ 113-90. Appointment of Commissioner; salary; expenses; bond; office. — The Director with the approval of the Board shall appoint a commissioner, who shall receive a salary fixed by the Board, not exceeding five thousand dollars ($5,000) per annum, payable monthly upon his own requisition. The Commissioner shall be reimbursed for his actual and necessary traveling expenses, not to exceed one thousand five hundred dollars ($1,500) per annum, incurred in the discharge of his official business when he is away from the place where his office is located, to be paid by proper voucher. The Commissioner shall give bond in the sum of ten thousand dollars ($10,000), to be approved by the State Treasurer, conditioned upon his faithful performance of the duties imposed upon him by the provisions of this Article. The bond shall be filed with the State Treasurer and the premiums paid from the State Game Fund. The Commissioner shall have his office in the offices of the Board at the Capitol. (1935, c. 486, s. 7.)

Editor's Note. — Because this section relates to past events and has been superseded by § 143-246, no changes have been made in it pursuant to Session Laws 1973, c. 1262, which reorganized the Department of Natural and Economic Resources.

§ 113-91. Powers of Executive Director of the North Carolina Wildlife Resources Commission. — In accordance with, and subject to such rules and regulations as may from time to time be adopted by the Wildlife Resources Commission relating thereto, the Executive Director of the North Carolina Wildlife Resources Commission shall have the following powers:

(1) To Issue Permits. — The Executive Director of the North Carolina Wildlife Resources Commission may issue a permit, revocable for cause, to any person, authorizing the holder to collect and possess wild animals or wild birds or birds' nests or eggs for scientific, propagation, or exhibition purposes, but no wild animals or wild birds shall be held in captivity under inhumane or unsanitary conditions. Before such a permit to take for scientific purposes is issued, the applicant must file written testimonials from two well known ornithologists or zoologists and pay the sum of two dollars ($2.00) for the permit, but duly accredited representatives of public educational or scientific institutions, or governmental departments of the United States engaged in the scientific study of birds and animals, may be granted such a permit without endorsements or charge or without being required to obtain a hunting license. If the Executive Director of the North Carolina Wildlife Resources Commission is satisfied of the good faith of the applicant, he shall issue to him a permit, which shall fix the date of its expiration, and may fix a restriction upon the number and kinds of animals, birds, or birds' nests or eggs to be taken thereunder, but no such permit shall be valid after the last day of the calendar year in which it is issued. Permits to take game animals or game birds during the closed season shall not be issued except to a duly accredited representative of a school, college, university, public museum or other institution of learning, or a representative of the federal government engaged in the scientific study of birds and animals or to a duly accredited representative of a state game department or commission to restock the covers of the state which he represents. Specimens of birds or animals legally taken and birds and animals reared in domestication pursuant to the provisions of this Article and to the regulations of the Wildlife Resources Commission may be bought, sold,

and transported at any time by any person holding a valid permit issued in accordance with the provisions of this section. When transported by common carrier or contained in a package, said specimens or any package in which the same are transported shall have clearly and conspicuously marked on the outside the name and address of the consignor and consignee, and an accurate statement of the numbers and kinds of birds and animals, specimens or parts thereof, or birds' nests or eggs contained therein and that such specimens are for scientific or propagation purposes. Each person receiving a permit under this section must file, at the expiration of his permit, with the Executive Director of the North Carolina Wildlife Resources Commission a report of his operations under the permit, which report shall set forth the name and address of the permittee, the number of his permit, the number of each species of birds, animals or birds' nests or eggs taken thereunder or otherwise acquired, disposition of the same, names and addresses of persons acquiring the same from the permittee, and number of each species on hand for propagation purposes at the expiration of the permit. The Wildlife Resources Commission is hereby authorized to prescribe from time to time rules and regulations governing the possession, purchase, sale and transportation of birds and animals raised in domestication pursuant to the provisions of this Article.

(2) To Employ Deputies. — The Executive Director of the North Carolina Wildlife Resources Commission may employ such game protectors, deputy game protectors, refuge keepers, employees, and agents as shall be necessary for the proper carrying out of the provisions of this Article, and with the approval of the Wildlife Resources Commission shall arrange the compensation for such protectors, deputy protectors, refuge keepers, employees and agents. Qualifications for the office of game protector shall be considered in the appointment of all game and fish protectors who shall be required to pass an examination showing their knowledge of provisions of the game and fish laws, the purposes of the protection of wildlife, and essential matters of administration of these statutes. Said examination shall be prepared under the supervision of the Executive Director of the North Carolina Wildlife Resources Commission and given in the county or district in which the said protector will serve and shall be conducted under the direction of the Executive Director of the North Carolina Wildlife Resources Commission or some suitable person designated by him. The Executive Director of the North Carolina Wildlife Resources Commission shall have general supervision and control over all such protectors, deputy protectors, refuge keepers, and employees, and shall enforce all the provisions of this Article and any other laws now in force or hereafter enacted for the protection of wild birds and animals, and shall exercise all necessary powers incident thereto. It shall be the duty of the protectors, deputy protectors, refuge keepers, and employees to obey and carry out the instructions and directions of the Executive Director of the North Carolina Wildlife Resources Commission for the enforcement of this Article.

(3) To Prepare Form of License. — It shall be the duty of the Executive Director of the North Carolina Wildlife Resources Commission to prepare forms of licenses and other forms necessary for use in the administration of the provisions of this Article, and to properly distribute them to the officers and persons required to issue licenses or use such forms. Each license shall be issued in the name of the Executive Director of the North Carolina Wildlife Resources

Commission and countersigned by the officer or person issuing it. Each licensee shall sign his name in ink on the license issued him. The Executive Director of the North Carolina Wildlife Resources Commission shall cause the license accounts of officers and persons issuing licenses to be examined and audited at least once during each year, and shall require such officers and persons promptly to pay him, in accordance with the provisions of this Article, all moneys received by them from the sales of licenses.

(4) To Execute Warrants. — The Executive Director of the North Carolina Wildlife Resources Commission and each of his deputies shall have power to execute all warrants issued for violation of this Article, and to serve subpoenas issued for examination, investigation, or trial of offenders against any of the provisions of this Article; to make search, after having first obtained proper warrant therefor, of any place or thing which such deputies have cause to believe contains wild birds or animals, or any part thereof, or the nest or eggs of birds possessed in violation of law; to seize wild birds or animals, or parts thereof, or nests, or eggs of birds killed, captured, or possessed in violation of law or showing evidence of illegal killing; to arrest without warrant any persons committing a violation of this Article in his presence, or upon reasonable grounds to believe that such person is committing a violation of this Article in his presence, and to take such person immediately before a court having jurisdiction for trial or hearing; and to exercise such other powers of peace officers in the enforcement of the provisions of this Article, or of judgments obtained for violation thereof, as are not herein specifically conferred.

(5) To Dispose of Seized Game and Devices. — All game birds and the edible portions of game animals seized under the provisions of this Article shall be disposed of by the Executive Director of the North Carolina Wildlife Resources Commission, or under his direction, by gift to hospitals, charitable institutions or almshouses in the county taken within the State. Nongame birds or parts thereof and the plumes or skins of wild birds or birds of foreign species shall be disposed of by the Executive Director of the North Carolina Wildlife Resources Commission by gift to scientific educational institutions within the State, or may be retained by him for use of the Wildlife Resources Commission or in his discretion they may be destroyed. The Executive Director of the North Carolina Wildlife Resources Commission shall take a receipt from the donee for any such gift, and file such receipt in his office, and he shall keep a permanent record of such gifts. The heads, antlers, horns, hides, skins, or feet, or parts of any game or fur-bearing animal, seized under the provisions of this Article, if the person from whom the same were seized is convicted of violating any of the provisions of this Article, or if the owner thereof is unknown, may be sold for cash by the Executive Director of the North Carolina Wildlife Resources Commission, or under his direction, at public auction to the highest bidder. Notice of the time and place of such sale, together with a description of the articles to be sold, shall be given by the Executive Director of the North Carolina Wildlife Resources Commission or under his direction in such manner as he may determine to be best calculated to bring the best price therefor: Provided, that if the property seized is perishable, that same may be disposed of by the Executive Director of the North Carolina Wildlife Resources Commission immediately. The Executive Director of the North Carolina Wildlife Resources Commission or his deputies authorized to make the sale shall issue to the purchaser a certificate stating that the purchaser

has the legal right to be in possession of the articles bought, and anyone so acquiring said article or articles from the State, other than the person from whom they were seized, shall have the right to possess the same. If the person from whom any of said articles were seized be acquitted of the charge of violating any of the provisions of this Article, the article so seized shall be returned to him. It shall be, and is hereby made, the duty of each deputy to make a full and complete report to the Executive Director of the North Carolina Wildlife Resources Commission of all property by him confiscated because of a violation of the game laws of this State, showing in detail a description of the property, the person from whom it was confiscated, the price received therefor upon public sale, and the disposition of the money. The Executive Director of the North Carolina Wildlife Resources Commission shall keep in his office a permanent record showing all property confiscated by him or any of his deputies, and the disposition made thereof under the provisions of this Article.

(6) To Seize Certain Devices in Certain Cases. — In all cases of violation of any law relating to the unlawful taking of, or unlawful attempt to take, any animals, birds, or fish, during the hours after sunset and before sunrise; or taking of or attempt to take, without a permit, deer or wild turkeys in closed season; or the unlawful taking of any doe deer; or the taking of or attempt to take any animals, birds or fish by means or use of dynamite or other explosive; or by the use of any silencer on any weapon; or by the unlawful use of any artificial light, or by means of any trap, net, snare, or other device, the use of which in taking or attempting to take animals, birds, or fish, is prohibited by law; or in case of transportation of game or game fish illegally so taken; or the unlawful taking or transportation of any doe deer; or in case of the unlawful sale of game or game fish, whether taken legally or illegally, all officers whose duty it is to enforce the game and game fish laws are hereby empowered to seize all devices, instruments, weapons, air- and watercraft, and vehicles used in the unlawful taking of or unlawful attempt to take animals, birds, or fish, at the times or by the means herein mentioned, or used in the transportation of any birds, animals, or fish so taken, or used in the unlawful taking or transportation of any doe deer, or used in the unlawful sale of game or game fish, whether taken legally or illegally. The devices, instruments, weapons, craft, and vehicles so seized shall be delivered to the sheriff of the county in which such offense is committed, or placed under said sheriff's constructive possession, if delivery of actual possession is impracticable; and the same shall be held by said sheriff pending the trial of the person or persons arrested for any of the offenses herein mentioned; and upon conviction of such person or persons of any of said offenses, the court may in its discretion, and subject to the rights of any third person in the property seized, adjudge the property so seized forfeited, and order the same sold in the manner provided by law for the sale of personal property under execution; the net proceeds of such sale shall be paid into the school fund of said county as other fines and forfeitures; the forfeiture and sale of such property when ordered shall be in addition to such fine or imprisonment as may be imposed by the court.

(7) To Seize Weapons and Devices to Be Used in Evidence. — At the time of making arrests for any violation of any law relating to the unlawful taking of or unlawful attempt to take animals, birds, or fish, the officer making the arrest is hereby empowered to seize any weapon or device unlawfully used in the violation for which the arrest is made; the weapons or devices so seized shall be delivered to the sheriff of the

county in which the offense is committed, to be held and used in evidence for the State upon the trial of the person or persons arrested for such violation. After the trial, any weapon or device so seized shall be returned to the owner thereof unless the offense shall be one of the offenses mentioned in subdivision (6) hereof, in which case the same may be returned to the owner thereof in such manner as the court may direct, unless the same be adjudged forfeited and ordered sold by the court upon conviction of the owner thereof for one of the offenses mentioned in said subdivision (6) hereof.

(8) Whenever any devices, instruments, weapons, air or watercraft, or vehicles are seized and placed in the possession of the sheriff pursuant to subdivisions (6) or (7) of this section, any person who establishes ownership in any such property to the satisfaction of the court or the sheriff shall be entitled to possession of the same upon furnishing the sheriff a bond in the amount of the value of such property, as fixed by the sheriff, conditioned on such person's producing such property in court on the day of the trial for the offense with respect to which such property was seized. (1935, c. 486, s. 8; 1949, c. 489; 1957, c. 1423, s. 1; 1967, c. 1119; 1973, c. 1262, s. 18.)

Local Modification. — Currituck, Gates, Pasquotank and Perquimans: 1953, c. 680; Washington: 1965, c. 140.

Editor's Note. — The 1973 amendment substituted "Executive Director of the North Carolina Wildlife Resources Commission" for "Commissioner" and "Wildlife Resources Commission" for "Board" in the introductory paragraph and throughout subdivisions (1) through (5).

Necessity for Acceptance of Appointment. — It was held in Birchfield v. Department of Conservation & Dev., 204 N.C. 217, 167 S.E. 855 (1933), decided under a prior law (1927, c. 51), that, although a man may have been appointed deputy game warden, he is not an employee of the State before he has received word of his appointment and accepted it.

Homicide Committed by Wildlife Protector Engaged in Performance of His Official Duties. — See State v. Ellis, 241 N.C. 702, 86 S.E.2d 272 (1955).

§ 113-92. Officers constituted deputy game protectors. — All sheriffs, deputy sheriffs, police officers, forest wardens, park patrolmen, refuge keepers, and all other peace officers are hereby made deputy game protectors, and it shall be made their duty to aid in the enforcement of this law. (1935, c. 486, s. 9; 1939, c. 119; 1973, c. 108, s. 66.)

Editor's Note. — The 1973 amendment deleted "constables" following "refuge keepers" and the former second through sixth sentences, relating to arrest fees and taxing of costs.

§ 113-93. Protectors, deputy protectors, and refuge keepers constituted special forest wardens. — The Executive Director of the North Carolina Wildlife Resources Commission, protectors, deputy protectors and refuge keepers are hereby made ex officio special forest wardens and charged with the duty of reporting to the forest wardens all infractions of the forest fire law and to assist forest wardens in extinguishing forest fires and generally enforcing the laws and regulations for the preservation of the forests. (1935, c. 486, s. 10; 1973, c. 1262, s. 18.)

Cross Reference. — As to State Forester and forest rangers, duties, etc., see § 113-52 et seq.

Editor's Note. — The 1973 amendment substituted "Executive Director of the North Carolina Wildlife Resources Commission" for "Commissioner."

§ 113-94. Payment to State Treasurer of license fees. — The Executive Director of the North Carolina Wildlife Resources Commission shall promptly pay to the State Treasurer all moneys received by him from the sale of hunting licenses or from any other source arising through the administration of this Article, and the State Treasurer shall deposit all such money in a special fund, to be known as the State Game Fund, and which is hereby reserved, set aside, appropriated and made available until expended as may be directed by the Wildlife Resources Commission in the enforcement of this Article and for the purposes of this Article. (1935, c. 486, s. 11; 1973, c. 1262, s. 18.)

Editor's Note. — The 1973 amendment substituted "Executive Director of the North Carolina Wildlife Resources Commission" for "Commissioner" and "Wildlife Resources Commission" for "Board."

§ 113-95. Licenses required. — No person shall at any time take any wild animals or birds without first having procured a license as provided by this Article, which license shall authorize him to take game only during the periods of the year when it shall be lawful. The applicant for a license shall fill out a blank application in the form prescribed and furnished by the Executive Director of the North Carolina Wildlife Resources Commission. Said application shall be subscribed and sworn to by the applicant before an officer authorized to administer oaths in this State, and the persons hereby authorized to issue licenses are hereby authorized to administer oaths to applicants for such licenses. Licenses may be issued by the clerk of the superior court for each county, the Executive Director of the North Carolina Wildlife Resources Commission, game protectors and such other persons as the Executive Director of the North Carolina Wildlife Resources Commission may authorize in writing:

License Fees

Nonresident hunting license	$22.00
Nonresident six-day hunting license	17.75
Resident State hunting license	5.50
Resident combination hunting and fishing license	7.50
Resident county hunting license	2.50

One dollar ($1.00) of each nonresident hunting license fee and nonresident six-day hunting license fee shall be used by the North Carolina Wildlife Resources Commission for the propagation, management, and control of migratory waterfowl in North Carolina and a like portion of such license fees shall be contributed by the North Carolina Wildlife Resources Commission to a proper agency or agencies in the United States; said sum to be spent in Canada for the propagation, management, and control of migratory waterfowl.

Any applicant who is a resident of this State shall pay to the authorized license-issuing agent the license fee for the type of license applied for in accordance with the above schedule. The issuing agent is authorized to retain, as his fee for issuing each license, the sum of twenty-five cents (25¢) for each license costing less than five dollars ($5.00) and the sum of fifty cents (50¢) for each license costing five dollars ($5.00) or more. The county hunting license shall entitle a resident of the State to take game birds and animals in the county of his residence; the State resident hunting license shall entitle a resident to take game birds and animals in any county in the State at large, in accordance with the North Carolina game laws and appropriate regulations of the Wildlife Resources Commission. Any person who shall have resided in this State for a period of at least six months or shall have maintained his domicile in this State for a period of at least 60 days immediately preceding the making of application shall be deemed a resident for the purposes of this Article, provided that when

resort must be had to the circumstances of domicile rather than to the mere fact of residence, such person shall sign a certificate of domicile on a form supplied by the Wildlife Resources Commission stating the necessary facts and intent to constitute legal domicile within this State for the required period of time. A nonresident of this State shall obtain a nonresident hunting license which shall entitle him to hunt during the entire season, or such nonresident may obtain a nonresident six-day hunting license which shall entitle him to hunt during six consecutive days during the open season. The combination hunting and fishing license may be obtained only by a resident of this State and shall authorize him to hunt and fish in any county of the State at large according to the law: Provided, that twenty-five cents (25¢) of the fee received for the sale of each resident State hunting license, each nonresident hunting license, and each State resident hunting and fishing license as set forth above shall be set aside as a special fund which shall be expended by the North Carolina Wildlife Resources Commission, in its discretion, for the purpose of purchase, lease, development and management of lands and waters in North Carolina, or for the purpose of securing federal funds for wildlife conservation projects through means of matching federal funds in such proportion as federal laws may require, and that twenty-five cents (25¢) of each State fee herein described shall be expended by such Wildlife Resources Commission, in its discretion, for the purpose of enlarging, expanding and making more effective the work of the education and enforcement divisions of the North Carolina Wildlife Resources Commission. Any lands and waters acquired as above provided are to be used for the propagation of game birds, game animals and fish for public hunting and fishing.

Any person acting for hire as a hunting guide shall obtain a guide's license, and shall pay therefor a license fee in an amount not to exceed the sum of ten dollars ($10.00), the Wildlife Resources Commission being hereby authorized and empowered to provide classifications, and to fix fees within said limit as to class. The Executive Director of the North Carolina Wildlife Resources Commission is hereby authorized and empowered to prescribe rules and make regulations respecting the duties of guides, to require that guides take an oath to abide by the game laws of the State, and to rescind the license of any guide who violates the regulations or is convicted of violating the game laws of the State: Provided, that the Executive Director of the North Carolina Wildlife Resources Commission may, upon request, issue a nonresident license to any game agent of the United States or of a state of the United States without payment of any fee, which license may be used by such agent of the United States or of a state of the United States only in the discharge of his official business: Provided, that a nonresident who holds fee simple title to lands in North Carolina may hunt on such lands and in the county where the deed to such lands is registered by payment of a license fee of five dollars ($5.00) plus fifty cents (50¢) for the issuing officer. Such nonresident must make a sworn application to the Executive Director of the North Carolina Wildlife Resources Commission, on forms provided by said Executive Director of the North Carolina Wildlife Resources Commission, setting forth the location of such lands, the nonresident's title thereto, and such other information as may be required by the Executive Director of the North Carolina Wildlife Resources Commission, and if such nonresident be a corporation, then only the nonresident president, the vice-president, the secretary-treasurer, and the directors, not to exceed seven in number, of such corporation, shall be permitted to take out a nonresident landowner's hunting license, as herein provided.

Any nonresident owning in his own right and in severalty 100 acres or more of land in the State of North Carolina may hunt upon such lands, subject to the provisions and restrictions of the North Carolina Game Law, without being required to purchase a hunting license.

Notwithstanding any other provisions of this section, an applicant shall be permitted to hunt on a "controlled shooting preserve," as defined in subdivision (7) of G.S. 113-84, if he possesses a special controlled shooting preserve hunting license. Said applicant shall pay to the officer or person issuing the license the sum of six dollars ($6.00) as a license fee, and the sum of fifty cents (50¢) as a fee to the officer or person, other than the Executive Director of the North Carolina Wildlife Resources Commission, for issuing the same, and shall thereby obtain a controlled shooting preserve license entitling such person to hunt, during the year for which such license is issued, on any controlled shooting preserve in the State without the necessity of having any other hunting license.

Any resident of this State who has attained the age of 65 years may, upon making application, including satisfactory proof of age, to the license section of the Wildlife Resources Commission at its headquarters in Raleigh, and upon payment of a fee of ten dollars ($10.00), receive from the Wildlife Resources Commission a nontransferable combination hunting and fishing license which shall be valid for the life of such person. Such license shall not relieve the holder thereof from the purchase of any additional license or permit which may be required for hunting big game, fishing for mountain trout, hunting and fishing on public wildlife management areas, or using special devices for fishing inland waters. Provided, however, that such lifetime combination hunting and fishing license shall be issued without charge to any such resident applicant who has attained the age of 70 years.

The certificate of domicile required in the third paragraph of this section to be supplied by the Wildlife Resources Commission shall as near as practicable be in form and contents as follows:

North Carolina Wildlife Resources Commission
Raleigh, North Carolina

State of North Carolina }
County of . . . . . } Certificate of Domicile

I, ... , do hereby represent and certify
(name of applicant)
to the North Carolina Wildlife Resources Commission that on the . . . . . day of . . . . . , 19. . . ., I established my bona fide residence and abode at . . . . . , ... ,
(street or R.F.D. No.) (city or town)
North Carolina; and I do hereby further represent and certify that at the time of establishment of such residence or abode and at all times since my intention was, has been, and still is to maintain such abode, or some other abode located within the State of North Carolina, as my principal place of residence either permanently or indefinitely.

Witness my hand this, the . . . . . day of . . . . . , 19. . . .

. . . . . .
(Signature of applicant)

Witness:

. . . . . .

(1935, c. 486, s. 12; 1937, c. 45, s. 1; 1945, c. 617; 1949, c. 1203, s. 1; 1957, c. 849, s. 1; 1959, c. 304; 1961, c. 834, s. 1; 1967, c. 790; 1969, c. 1030; c. 1042, ss. 1-5; 1971, c. 242; c. 282, s. 1; c. 705, ss. 1, 2; 1973, c. 1262, s. 18.)

Cross Reference. — As to agents for sale and distribution of hunting, fishing and trapping licenses, see § 113-81.4.

Editor's Note. — The 1973 amendment substituted "Executive Director of the North Carolina Wildlife Resources Commission" for "Commissioner" throughout the section and substituted "Wildlife Resources Commission" for "Commission" in two places and for "Board" in one place.

§ 113-95.1. Licenses for members of armed forces. — All members of the armed forces of the United States stationed at a military facility in North Carolina shall be required to meet State hunting license requirements, as provided by this Article, on all land within the State including land under jurisdiction of the armed forces; provided, however, that any member of the armed forces who is a nonresident of North Carolina, and who is assigned to active duty at a military facility in North Carolina, shall be entitled to purchase a resident State hunting license without regard to State residence requirements. (1951, c. 1112, s. 1.)

§ 113-95.2. Special big-game hunting license. — In addition to such hunting licenses as are required by G.S. 113-95, no one may hunt any species of big game without first having procured a special big-game hunting license which shall be issued only upon payment of a license fee in the sum of one dollar and fifty cents ($1.50) plus twenty-five cents (25¢) for the issuing agent. For the purpose of this section "big game" is defined as deer, bear, wild boar and wild turkey. (1969, c. 1042, s. 7.)

§ 113-95.3. Licenses for disabled veterans. — All one-hundred-percent (100%) disabled war veterans as determined by the Veterans Administration shall be issued a lifetime license for hunting, fishing and trapping as provided in this Chapter, upon payment of one annual license fee. (1969, c. 1042, s. 13.)

§ 113-95.4. Report to Wildlife Resources Commission required upon killing of bear, wild turkey or antlerless deer. — Any person killing a bear, wild turkey or antlerless deer shall make a report of such kill to the Wildlife Resources Commission. The Commission is authorized and empowered by appropriate regulations to prescribe the method of making such report and the contents thereof, and to require positive identification of the carcass of the kill, by tagging or otherwise, pending completion of the report. (1973, c. 1097, s. 1.)

§ 113-96. Trappers' licenses. — Any person who shall at any time take fur-bearing animals by trapping shall take out and shall annually procure a trapper's license, and shall pay therefor the sum of three dollars ($3.00) as a license fee, and the sum of twenty-five cents (25¢) as a fee to the officer or person other than the Executive Director of the North Carolina Wildlife Resources Commission, for issuing the same, and shall obtain a license which shall permit him to trap in the county of his residence, or, shall pay the sum of four dollars ($4.00) as a license fee and the sum of twenty-five cents (25¢) as a fee to the officer or person other than the Executive Director of the North Carolina Wildlife Resources Commission, for issuing the same, and shall obtain a license which shall entitle him to trap in any county in the State and in the State at large. Said applicant, if a nonresident of this State, or a resident of less than six months, or an alien, shall pay to the officer or person issuing the license, the sum of twenty-five dollars ($25.00) as a license fee, and the sum of fifty cents (50¢) as a fee to the officer or person, other than the Executive Director of the North Carolina Wildlife Resources Commission, for issuing the license, and shall obtain a nonresident trapper's license, which shall entitle him to trap in the State at large. Trapping licenses shall be issued on forms to be provided by the Executive Director of the North Carolina Wildlife Resources Commission, and shall be distinguished from the general hunting licenses above provided. The manner of taking fur-bearing animals by trapping shall be as provided in this Article. The Wildlife Resources Commission is authorized to issue combination licenses for hunting and trapping, which said combination licenses may be for an amount less than the total of the trapping and hunting licenses when purchased separately. The proceeds from the sale of trapping licenses and/or combination hunting and trapping licenses shall be subject to the disposition made in this Article. (1929, c. 278, s. 3; 1969, c. 1042, s. 6; 1973, c. 1262, s. 18.)

Cross Reference. — As to agents for sale and distribution of hunting, fishing and trapping licenses, see § 113-81.4.

Editor's Note. — The 1973 amendment substituted "Executive Director of the North Carolina Wildlife Resources Commission" for "Commissioner of Game and Inland Fisheries" and for "Commissioner" and substituted "Wildlife Resources Commission" for "Board."

§ 113-96.1. Schedule of licenses. — The several hunting and trapping licenses required by the preceding G.S. 113-95, 113-95.2, and 113-96 are summarized and tabulated as follows:

Nonresident hunting license	$22.00
Nonresident six-day hunting license	17.75
Nonresident landowner's county hunting license	5.50
Resident State hunting license	5.50
Resident combination hunting and fishing license	7.50
Resident county hunting license	2.50
Controlled shooting preserve license	6.50
Special big-game hunting license	1.75
Nonresident trapping license	25.50
Resident State trapping license	4.25
Resident county trapping license	3.25

(1969, c. 1042, s. 8.)

§ 113-97. Term and use of license. — Each license shall be void after the first day of August next succeeding the date of its issuance. Each licensee shall have his license on his person at all times when he is taking game animals or game birds, and shall exhibit the same for inspection to any game protector or other officer requesting to see it. No person shall alter or loan, change, or transfer any license issued pursuant to the provisions of this Article, nor shall any person other than the person to whom it is issued use the same. (1935, c. 486, s. 13.)

§ 113-98. Exemption. — Any person who is a resident of this State, and any dependent member of his family under 18 years of age, may take game birds and wild animals in the open season for the same, and not contrary to the provisions of this Article, on lands owned by such resident without a license; and a minor member of a family resident of this State, under 16 years of age, may hunt under the license of his parent or guardian; but such minor must carry such license when so hunting, unless accompanied by such parent or guardian; and a nonresident minor child of any resident of this State may lawfully procure and use the same license required of a resident, when such nonresident child is actually visiting such resident parent: Provided, that a party who leases a farm for cultivation shall not be required to obtain a license to hunt thereon. (1935, c. 486, s. 14; 1971, c. 1231, s. 1.)

§ 113-99. Disposition of license fees. — The license fees provided to be paid in this Article shall be remitted by the officers or persons issuing the license on the first and fifteenth of each month to the Executive Director of the North Carolina Wildlife Resources Commission with a schedule setting forth the name and address of each licensee, the serial number and classification of the license, and the amount paid for each license issued, except that the officer or person issuing licenses shall, before making such remittance, deduct and retain as his fee the amount of fees provided to be paid to him by the provisions of this Article for issuing license. On or before the first day of April of each year, each officer or person authorized to issue license shall forward to the Executive Director of the North Carolina Wildlife Resources Commission the stubs of licenses issued by him and all unused licenses, together with a report covering the number of licenses issued and the amount of license money received by him; the Executive Director of the North Carolina Wildlife Resources Commission shall tabulate

the total number of licenses of all kinds issued in the State and the fees received therefor, and he shall include such data in his biennial report. (1935, c. 486, s. 15; 1973, c. 1262, s. 18.)

Editor's Note. — The 1973 amendment substituted "Executive Director of the North Carolina Wildlife Resources Commission" for "Commissioner."

§ 113-100. Open season. — The open seasons for taking game animals and game birds, subject to changes by the Wildlife Resources Commission from time to time as the supply of wildlife shall justify, are as follows:

Bear	October 1 to January 1
Deer (male)	October 1 to January 1
Mink, muskrat, otter	November 1 to February 15
Oppossum, raccoon (with gun or dogs)	October 1 to February 1
Opossum, raccoon (trapping)	November 1 to February 15
Quail	Thanksgiving Day of each year to February 15
Rabbit	Thanksgiving Day of each year to February 15
Squirrel	September 15 to January 15
Turkey	Thanksgiving Day of each year to February 1
Woodcock	December 1 to December 31
Ruffed grouse	November 20 to December 15
Wildcat, weasel, skunk	No closed season
Beaver, buffalo, elk, doe deer and pheasants	No open season
Dove, ducks, geese, brant and other migratory waterfowl	Federal regulations
Snipe, sora, marsh hens, rails, gallinules	Federal regulations
Fox	County regulations

The open and closed season on all migratory wild fowl shall conform with the United States biological survey legislation, irrespective of seasons as set forth by the North Carolina Game Law. (1935, c. 486, s. 16; 1973, c. 1262, s. 18.)

Local Modification. — Beaufort: 1969, c. 265; 1971, c. 129; Duplin: 1969, c. 258; Gates: 1969, c. 121; Hertford, as to certain areas: 1953, c. 963; Jackson: 1969, c. 1259; Pender: 1969, c. 258; Transylvania: 1969, c. 1259.

Editor's Note. — The 1973 amendment substituted "Wildlife Resources Commission" for "Board of Conservation and Development."

§ 113-101. Bag limits. — It shall be unlawful to take a greater number of each species of birds or animals per day or per season than is enumerated in the following table. The Wildlife Resources Commission may alter these bag limits as changes in the supply of wildlife may justify.

	Per Day	Per Season
Bear	No limit	No limit
Deer	1	3
Mink, muskrat, otter	No limit	No limit
Opossum, raccoon	No limit	No limit
Quail	10	150
Rabbit	No limit	No limit
Squirrel	10	No limit
Turkey	1	3
Ruffed grouse	2	10
Woodcock—Federal regulations.		

Dove, ducks, geese, brant and other migratory waterfowl — Federal regulations.

Snipe, sora, marsh hens, rails, gallinules — Federal regulations.

Wildcat, weasel and skunk — No limit.

Fox — County regulations.

Game birds and game animals lawfully taken may be possessed during the open season therefor and the first 10 days next succeeding the close of such open season, but a person may not have in possession at any one time more than two deer, two wild turkeys and two days' bag limit of other game animals or game birds.

Notwithstanding any other provisions of this section or any other section of law, it shall not be unlawful for any person to possess game birds and game animals for a period longer than 10 days next succeeding the close of the open season during which such birds or animals were lawfully taken, provided a written declaration of the kinds and amounts of birds or animals so possessed is filed with the county game and fish protector within 10 days of the close of the season during which such birds or animals were taken, but the amount and kinds of such birds and animals possessed at any one time shall not exceed the limitations imposed by law on the possession of any such birds or animals.

The bag limit, possession limit and open seasons on dove and all other migratory birds and wild fowl shall be the same as that prescribed by the United States biological survey legislation irrespective of bag limits, possession limits and seasons set forth by the North Carolina Game Law. (1935, c. 486, s. 17; 1949, c. 1205, s. 1; 1973, c. 1262, s. 18.)

Editor's Note. — The 1973 amendment substituted "Wildlife Resources Commission" for "Board of Conservation and Development."

§ 113-102. Protected and unprotected game. — (a) Wild birds and animals for which no open seasons are provided shall be classed as protected and it shall be unlawful to take or possess them at any time except as provided by G.S. 113-87.

(b) Unprotected Birds. — English sparrows, blackbirds (except redwing blackbirds) and starlings and their nests and eggs.

(b1) Other birds or animals which are not in need of protection or management may from time to time be classed as unprotected by the Wildlife Resources Commission in any locality or in the entire State, and when so classified they may be taken, possessed, bought, sold and transported at any time.

(c) Unprotected birds or animals may not be taken by the use of dynamite or any explosive similarly used or by the use of any poison, except that this shall not apply to any such bird or animal when and where the same shall be declared a pest and appropriate regulations governing the use of pesticides for controlling the said pest have been considered pursuant to the provisions of the North Carolina Pesticide Law of 1971 or the Structural Pest Control Act of 1955.

(c1) When and where a wild bird or animal is declared a pest pursuant to the provisions of the North Carolina Pesticide Law of 1971 or the Structural Pest Control Act of 1955 and has not been classed as unprotected by the Wildlife Resources Commission as provided in subsection (b1) above, the Wildlife Resources Commission shall take one of the following actions within 60 days after proper notification of such declaration:

(1) After holding a public hearing classify the wild bird or animal in question as either protected or unprotected. If the bird or animal is classed as protected, it shall be subject to subsection (a) above; if unprotected, action may be taken as determined pursuant to the North Carolina Pesticide Law of 1971 or the Structural Pest Control Act of 1955.

(2) By inaction, or at its discretion, allow the bird or animal to automatically be classed as unprotected and subject to subsection (c) above.

(d) No person shall take squirrels at any time in any public park. It shall be unlawful at any time to buy, or sell, rabbits or squirrels for the purpose of resale.

Rabbits may be box-trapped or hunted without gun at any time. The setting of steel traps for bear is unlawful. Foxes may be taken with dogs only, except during the open season, when they may be taken in any manner. It shall be unlawful at any time to take any wild deer while swimming or in water to its knees. It shall be unlawful to take or possess American alligators or their eggs at any time, except that any bona fide zoo, either public or private, may, under a permit issued by the Executive Director of the Wildlife Resources Commission, possess such alligators and eggs for purposes of display and/or propagation. It shall be unlawful to take North American panthers (cougars) at any time. (1935, c. 486, s. 18; 1949, c. 1205, s. 2; 1965, c. 904, s. 1; 1967, c. 728, s. 1; 1971, c. 449, s. 1; c. 461; c. 648, s. 1; 1973, c. 1210, ss. 1-3, 5; c. 1262, s. 18.)

Local Modification. — Lee: 1953, c. 688; Washington, as to subsection (c): 1971, c. 174.

Editor's Note. — The first 1973 amendment added "wild" at the beginning of subsection (a), substituted "seasons are" for "season is" near the middle of subsection (a), added at the end of subsection (a) "except as provided by G.S. 113-87" and deleted the former second sentence of subsection (a), which provided "Unprotected birds and animals may be taken, possessed, bought, sold and transported at any time in any manner." In subsection (b), the amendment deleted crows, jays and buzzards from the list of unprotected birds and inserted "(except redwing blackbirds)." The amendment also added subsections (b1) and (c1) and rewrote subsection (c).

The second 1973 amendment inserted "Wildlife Resources" preceding "Commission" the second time the word appears in the introductory paragraph of subdivision (c1).

Session Laws 1973, c. 1210, s. 6, provides: "This act shall not invalidate any city or local ordinances now in existence."

§ 113-103. Unlawful possession. — The possession, transportation, purchase or sale of any dead game animals, dead game birds, or parts thereof during the closed season in North Carolina, though said animals, birds, or any parts thereof were taken or killed without the State in the open season in such state, shall be unlawful; and the possession of same shall be prima facie evidence of the violation thereof: Provided, said animals or birds or parts thereof belong to any one of the family or classes protected by the North Carolina Game Law as amended to date.

The Executive Director of the North Carolina Wildlife Resources Commission, all game protectors, deputy game protectors and refuge keepers shall have the power to enter and search any refrigeration plant, refrigerators and ice boxes of all public refrigerating storage plants, meat shops, hotels, restaurants, or other public eating places, in which such officer, making such search, has reasonable grounds to believe that game taken, killed or stored in violation of the North Carolina Game Law has been concealed or stored, and which will furnish evidence of a violation of such laws; and such search may be made without warrant, except that no dwelling may be searched without a warrant. (1935, c. 486, s. 19; 1973, c. 1262, s. 18.)

Editor's Note. — The 1973 amendment substituted "Executive Director of the North Carolina Wildlife Resources Commission" for "Commissioner."

§ 113-103.1. Deer accidentally killed. — Notwithstanding any regulation of the Wildlife Resources Commission, any person who shall accidentally kill a deer with an automobile or other motor vehicle need not report such accident to the Wildlife Resources Commission nor shall said person have to surrender the carcass of the dead deer to any public agency or public official. Provided that any person desiring to keep the carcass of an accidentally killed deer must obtain a permit from a wildlife protector or other law-enforcement officer. (1971, c. 400, s. 1.)

§ 113-104. Manner of taking game. — No person shall at any time of the year take in any manner, number, or quantity any wild bird or wild animal, or take the nests or eggs of any wild bird, or possess, buy, sell, offer or expose for sale, or transport at any time or in any manner any such bird, animal, or part thereof, or any birds' nests or eggs, except as permitted by this Article; the possession of any game animals, or game birds or part of such animals or game birds, except those expressly permitted by the Wildlife Resources Commission, in any hotel, restaurant, cafe, market or store, or by any produce dealer in this State shall be prima facie evidence of the possession thereof for the purpose of sale in violation of the provisions of this Article; but this provision shall not be construed to prohibit the person lawfully obtaining game from having it prepared in a public eating place and served to himself and guest: Provided, however, that for the purpose of this Article any person hiring another to kill aforesaid game animals or game birds and receiving same shall be deemed buying same, and subject to the penalties of this Article. Game birds and game animals shall be taken only in the daytime, between sunrise and sunset, with a shotgun not larger than number 10 gauge, a rifle, or with bow having minimum pull of 45 pounds and nonpoisonous, nonbarbed, nonexplosive arrow with minimum broadhead width of seven eighths of an inch, unless otherwise specifically permitted by this Article: Provided, however, blunt-type arrowheads may be used in taking game birds and small game animals including, but not by way of limitation, rabbits, squirrels, quail, grouse, turkeys and pheasants; provided that [in Alexander, Buncombe, Caldwell, Cherokee, Clay, Cleveland, Graham, Haywood, Macon, Madison, Mitchell, Polk, Rutherford, Transylvania and Yancey Counties] pistols with barrels not less than six inches in length and a muzzle velocity of not under 1100 feet per second and bullet weight of not less than 35 grains or more than 70 grains may be used in the hunting or taking of squirrels or rabbits on one's own land or on land in one's legal possession, or on lands of another where expressed permission has been granted therefor. No person shall take any game animals or game birds or migratory game birds from any automobile, or from any engine-powered or self-propelled vehicle or any vehicle especially equipped to provide facilities for taking deer by any unlawful means, or by aid of or with the use of any jacklight, or other artificial light, net, trap, snare, fire, salt lick or poison; nor shall any such jacklight, net, trap, snare, fire, salt lick or poison be used or set to take any animals or birds; nor shall birds or animals be taken at any time from an airplane, power boat, sailboat, or any boat under sail, or any floating device towed by a power boat or sailboat or, during the hours between sunset and sunrise, from any other floating device; nor shall any person take any dove, wild turkey, or upland game bird on any field, or in any cover in which corn, wheat, or other grain has been deposited for the purpose of drawing such birds thereto. However, it shall be lawful to use an artificial light and firearms except where prohibited by the North Carolina Wildlife Resources Commission regulations when hunting raccoons or opossums with dogs, or when hunting frogs. A person may take game birds and wild animals during the open season therefor with the aid of dogs, unless specifically prohibited by this Article. It shall be lawful for individuals and organized field trial clubs or associations for the protection of game to run trials or train dogs at any time: Provided, that no shotgun or rifle be used and that no game birds or game animals shall be taken during the closed season by reason thereof. The Wildlife Resources Commission shall have, and is hereby given, full power and authority to make regulations defining the manner of taking fur-bearing animals and to prohibit the use of steel traps in any county or districts of the State when it shall appear necessary and advisable to the said Wildlife Resources Commission. Any person who shall cut down den trees in taking game or fur-bearing animals shall be guilty of a misdemeanor.

No person shall take any wild animal or wild bird at night with the aid of an artificial light if such taking is from any aircraft, vehicle, watercraft, or other conveyance; provided however that this section does not prohibit the collection of specimens for scientific and medical studies when conducted under permit issued by the North Carolina Wildlife Commission.

It shall be unlawful for any person or persons to hunt with guns or dogs upon the lands of another without first having obtained permission from the owner or owners of such lands, and said permission so obtained may be continuous for one open hunting season only.

It shall be unlawful for any person to hunt, take or kill any upland game birds, squirrels or rabbits with or by means of any automatic-loading or hand-operated repeating shotgun capable of holding more than three shells, the magazine of which has not been cut off or plugged with a one-piece metal or wooden filler incapable of removal through the loading end thereof, so as to reduce the capacity of said gun to not more than three shells at one time in the magazine and chamber combined; provided, that this sentence shall not apply to any person while lawfully hunting on a licensed "controlled shooting preserve" as defined by G.S. 113-84(7). It shall be unlawful for any person while hunting wild birds and animals with a gun to refuse to surrender such gun for inspection upon request of a duly authorized officer. It shall also be unlawful to shoot any such birds while such birds are sitting on the ground.

It shall be unlawful for any person to possess, sell, or offer for sale any noose-type commercially manufactured snare by which an animal may be entangled and caught.

It shall be unlawful for any person to take or kill or attempt to take or kill any deer from or through the use of any boat or other floating device; provided that this section shall not prohibit the transportation of hunters, their guns, dogs, or other hunting equipment or their legally taken game by means of any boat or other floating device, and shall not prohibit the hunter shooting from his stand, if such stand is not within or a part of such boat or floating device. This paragraph shall not apply to the Counties of Beaufort, Burke, Camden, Carteret, Cherokee, Chowan, Columbus, Craven, Cumberland, Currituck, Dare, Edgecombe, Gates, Hertford, Hoke, Lenoir, Martin, Pamlico, Pasquotank, Perquimans, Person, Robeson, Surry, Swain, Tyrrell, Washington, Wayne and Yadkin. With respect to the Roanoke River and its tributaries in Northampton and Bertie Counties, but not to any of its tributaries in Halifax and Edgecombe Counties, between the Roanoke River's intersection with U.S. Highway 301 at Weldon in Northampton County and its intersection with U.S. Highway 17 at Williamston in Bertie County, this paragraph shall apply; provided, however, this paragraph shall not apply to any other river or stream in Northampton, Bertie, Edgecombe and Halifax Counties. For the purposes of this section, no portion of the Roanoke River shall be deemed to lie in Martin County. (C. S., s. 2124; 1935, c. 486, s. 20; 1939, c. 235, s. 1; 1949, c. 1205, s. 3; 1955, c. 104; 1959, cc. 207, 500; 1961, c. 1182; 1963, c. 381; c. 697, ss. 1, 3½; 1967, c. 858, s. 1; c. 1149, s. 1.5; 1969, cc. 75, 140; 1971, c. 439, ss. 1-3; c. 899, s. 1; 1973, c. 1096; c. 1262, s. 18.)

Local Modification. — Beaufort: 1969, c. 265; 1971, c. 129; Duplin: 1969, cc. 195, 258; Franklin: 1969, c. 484; Pender: 1969, cc. 129, 258; Stanly: 1969, c. 858; Tyrrell: 1969, c. 757; Wake: 1973, c. 1382.

Editor's Note. — The first 1973 amendment added the proviso as to hunting on a licensed controlled shooting preserve at the end of the first sentence of the fourth paragraph.

The second 1973 amendment substituted "Wildlife Resources Commission" for "Board" near the middle of the first sentence, and in two places in the next-to-last sentence, of the first paragraph.

Section Is Constitutional. — This section and the first sentence of § 113-109(b), protecting and managing wildlife, are within the legitimate interests of the State and in the public interest and

are constitutional. State v. Lassiter, 13 N.C. App. 292, 185 S.E.2d 478 (1971).

Purpose of Section. — This section and the first sentence of § 113-109(b) have the purpose of controlling and managing the use and methods of taking wildlife. State v. Lassiter, 13 N.C. App. 292, 185 S.E.2d 478 (1971).

Section Is Clear. — This section and the first sentence of § 113-109(b) are clear and definite as to the persons within the scope of the sections and the acts which are penalized. State v. Lassiter, 13 N.C. App. 292, 185 S.E.2d 478 (1971).

Section 113-109 Punishes Same Offense. — Section 113-109(b) does not create a distinct or separate criminal offense from that created and defined by this section; rather it merely provides a greater punishment when the stated conditions are shown and proved by the State. State v. Lassiter, 13 N.C. App. 292, 185 S.E.2d 478 (1971).

Pursuit of Deer by Aid of Artificial Light Is Violation. — One violates this section when he pursues or attempts to kill a deer by aid of or with the use of any artificial light, because this activity falls within the statutory definitions of "taking" and "game animal." State v. Lassiter, 13 N.C. App. 292, 185 S.E.2d 478 (1971).

Warrant Sufficient. — Warrants charging that defendants unlawfully and willfully attempted to take deer with the aid of an artificial light between the hours of sunset and sunrise in an area known to be inhabited and frequented by deer, is sufficient to charge the offense defined by this section; the words "in an area known to be inhabited and frequented by deer" are mere surplusage and may be disregarded. State v. Lassiter, 9 N.C. App. 255, 175 S.E.2d 689 (1970).

In a prosecution charging defendants with the unlawful hunting of deer by artificial light, it was incumbent upon the defendants to ask for a bill of particulars if they desired to know in what area of the county the offense took place. State v. Lassiter, 9 N.C. App. 255, 175 S.E.2d 689 (1970).

Applied in State v. Vaughan, 268 N.C. 105, 150 S.E.2d 31 (1966); State v. Link, 13 N.C. App. 568, 186 S.E.2d 634 (1972).

Cited in Pegg v. Gray, 240 N.C. 548, 82 S.E.2d 757 (1954).

§ 113-105. License to engage in business of game propagation; sale and transportation regulated. — Any person desiring to engage in the business of propagating in captivity upland game birds, ducks and geese, or any of them on land of which he is the owner or lessee and selling same pursuant to the provisions of this section may make application in writing to the Executive Director of the North Carolina Wildlife Resources Commission for a license to do so. The Executive Director of the North Carolina Wildlife Resources Commission, when it shall appear that such application is made in good faith, shall, upon the payment of a fee of two dollars ($2.00), issue to each applicant a license permitting such licensee to propagate such game birds on land of which he is the owner or lessee, the location of which shall be stated in such application and such license; to sell and ship such propagated game birds in the State from the State alive at any time for breeding or stocking purposes and take such propagated game birds except wild quail and wild turkey in any manner and at any time and sell the carcasses for food as hereinafter prescribed: Provided, that propagated upland game birds may be killed by shooting only during the open season as established by the Wildlife Resources Commission; and, provided further, that propagated migratory game birds may be killed by shooting only during the open season for migratory game birds. Each such license shall expire on the thirty-first day of December of the year in which it is issued. Each holder of a game bird propagating license shall keep such license prominently displayed at the place of business specified therein.

Every person holding a game bird propagating license issued by the Executive Director of the North Carolina Wildlife Resources Commission shall keep accurate, written records, showing the number of game birds of each species propagated, bought, or sold, and the disposition thereof. These records shall be kept permanently on the premises stated in such license and shall be open for inspection by any duly authorized representative of the Executive Director of the North Carolina Wildlife Resources Commission at all reasonable times.

Migratory game birds propagated in accordance with this section shall not be bought or sold for food, unless each bird, before attaining the age of four weeks, shall have had removed from the web of one foot a portion thereof in the form

of a "V" large enough to make a well-defined mark, which shall be sufficient to identify it as a bird propagated in accordance with this section of the North Carolina Game Law. Migratory game birds propagated in accordance with this section may be bought, sold or offered for sale for food only after being tagged with an indestructible metal tag which shall be supplied by the Wildlife Resources Commission.

Common carriers shall receive and transport game birds tagged as aforesaid but to every package containing such propagated game birds shall be affixed a tag or label upon which shall plainly be printed or written the name, address and license number of the person by whom such propagated game birds are shipped and the name and address of the person to whom such propagated game birds are to be transported and number of each kind contained therein. The Wildlife Resources Commission shall be entitled to receive and shall collect for each tag to be affixed to the carcass of each game bird propagated, in accordance with this section, the sum of five cents (5¢). The said tags shall remain affixed as aforesaid until the carcasses of such propagated game birds shall be finally prepared for consumption: Provided, that the owner or proprietor of a hotel, restaurant, boardinghouse, or the manager of a club, may sell a portion of a tagged game bird to a guest, customer, or member, for consumption on the premises.

The proprietor or keeper of a hotel, restaurant or cafe, boardinghouse or club, desiring to serve game to his patrons, may make application to the Wildlife Resources Commission for a license to do so. The Wildlife Resources Commission, when it shall appear that such application is made in good faith, shall upon the payment of a fee of ten dollars ($10.00) issue to each such applicant a license permitting the holder thereof to buy and possess game birds lawfully tagged, and to serve such game to his patrons for consumption at any time, but only on the premises, the location of which shall be definitely stated in such license and the application therefor. Each such license to serve game birds shall expire on the thirty-first day of December in the year in which it is issued. Each person holding a license to serve game birds shall keep such license prominently displayed at the place of business specified therein. The holder of a license to serve game birds may purchase only game birds tagged in accordance with law. Each holder of a license to serve game birds shall keep accurate written records of each and every purchase, which records shall contain the name and address of the person or corporation from whom such game birds were purchased, the date of each transaction and the number and kind of game birds included in each purchase. These records shall be kept permanently at the place of business specified in the license and shall be open for inspection by any duly authorized representative of the Wildlife Resources Commission at all reasonable times. Each holder of a license to serve game birds shall send a certified copy of these records for the previous calendar year to the Wildlife Resources Commission not later than January fifteenth. The Wildlife Resources Commission shall furnish the forms on which these records are to be kept. The Wildlife Resources Commission is hereby authorized to prescribe from time to time rules and regulations governing the possession, purchase, sale and transportation of birds raised in domestication pursuant to the provisions of this Article.

It shall be unlawful for any person to release any domestically propagated or pen-raised wild turkey (Meleagris gallopavo) for stocking purposes. (1935, c. 486, s. 21; 1971, c. 515, s. 5; 1973, c. 1098; c. 1262, s. 18.)

Editor's Note. — The first 1973 amendment added the last paragraph of the section.

The second 1973 amendment substituted "Executive Director of the North Carolina Wildlife Resources Commission" for "Commissioner" and substituted "Wildlife Resources Commission" for "Board," for "Department of Conservation and Development" and for "Department" throughout the section.

§ 113-105.1. Possession, sale and transportation of certain ring-necked pheasants and chukar partridges legalized. — Nothing herein contained shall be deemed or held to prohibit or to render unlawful any market, store or any produce dealer in this State from possession, buying, selling, offering or exposing for sale or transporting, at any time or in any manner, any ring-necked pheasants or chukar partridges, or carcasses thereof, propagated in captivity and tagged with an indestructible metal tag as provided for by G.S. 113-105. (1957, c. 1007.)

§ 113-105.2. Pen-raised quail. — (a) The Wildlife Resources Commission shall on or before October 1, 1971, promulgate rules and regulations for the possession, sale, and transportation of pen-raised quail for food purposes, and in adopting such rules and regulations the Wildlife Resources Commission shall provide for adequate safeguards against the trapping of wild quail; and to provide for close supervision of any person, firm or corporation raising pen-raised quail for food purposes and to take every reasonable precaution so as to adequately distinguish such pen-raised quail from wild quail.

(b) When any person, firm, or corporation applies in writing to the Executive Director, the Executive Director, when it shall appear that such application and applicant have complied with the rules and regulations promulgated by the Wildlife Resources Commission, shall issue a revocable permit to sell pen-raised quail for food purposes.

(b1) Every person who wishes to raise and sell pen-raised quail for food purposes, upon application for the permit described in subsection (b) shall pay the sum of fifty dollars ($50.00) to the Wildlife Resources Commission, to be used by the Wildlife Resources Commission to defray the expenses incurred in the processing of the application.

(c) The Executive Director shall without notice have the right to revoke any permit issued under this section for failure to comply with any rule or regulation of the Wildlife Resources Commission. Upon revocation of any permit, the permittee shall have the right to appeal any revocation to the Wildlife Resources Commission.

(d) If any person, firm, corporation, permittee, processor, or merchant shall violate any of the rules and regulations promulgated by the Wildlife Resources Commission, they shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than one hundred fifty dollars ($150.00), or by imprisonment not exceeding 30 days or both. (1971, c. 515, ss. 1-4; c. 1114; 1973, c. 1262, s. 18.)

Editor's Note. — The 1973 amendment substituted "Wildlife Resources Commission" for "Commission" throughout the section.

§ 113-106. Unlawful transportation. — No common carrier or employee of such carrier shall, while engaged in such business, transport for the owner any wild animals or birds or any part thereof, or nest or eggs of any bird, nor shall any such carrier or employee knowingly receive or possess the same for shipment for another, unless the person offering the same for shipment is in possession of valid hunting license or collecting permit. A person who is a resident of this State may transport within the State, during the open season therefor, game birds and game animals lawfully taken. A person who is a nonresident of the State and a holder of a valid nonresident hunting license may, under a permit issued by the Executive Director of the North Carolina Wildlife Resources Commission, transport within this State, or from a point within to a point without, during the open season therefor, game birds and game animals or parts thereof lawfully taken by him, but he shall not transport out of the State

during any one open season more than two male deer and two wild turkeys, or during one calendar week more than two days' bag limit of other game animals and game birds. A person may transport, buy, or sell at any time or in any manner nongame animals and the fur of fur-bearing animals lawfully taken and tagged. A person may transport, and possess at any time and in any manner the head, antlers, hides, feet or skin of game animals or game birds lawfully taken. A person may buy and sell at any time the mounted specimens of heads, antlers, hides and feet of game animals, and the skins of game birds lawfully taken and possessed: Provided, the person selling such specimens has a written permit issued by the Executive Director of the North Carolina Wildlife Resources Commission, authorizing him to do so. (1935, c. 486, s. 22; 1941, c. 231, s. 1; 1973, c. 1262, s. 18.)

Editor's Note. — The 1973 amendment substituted "Executive Director of the North Carolina Wildlife Resources Commission" for "Commissioner."

§ 113-107. Marking packages in which game transported. — Any package in which any wild animal or bird or parts thereof or egg or nest of any wild bird is transported shall have clearly and conspicuously marked on the outside thereof the names and addresses of the consignor and consignee, together with an accurate statement of the number and kinds of animals or birds or parts thereof, or eggs or nests, contained therein. (1935, c. 486, s. 23.)

§ 113-108. Privately owned public hunting grounds. — In order to improve hunting, to open to the hunting public lands well stocked with game, and to give landowners some income through game protection and propagation, the State of North Carolina, through the Wildlife Resources Commission, is authorized to recognize, list, and assist the owners in protecting their lands which are a part of public hunting grounds organized under this section of the North Carolina Game Law, subject to the following conditions, stipulations, and such rules as the Wildlife Resources Commission may adopt for the regulation of said hunting grounds:

(1) The minimum area recognized under this Article is 1,000 acres;

(2) Owners of land included in a hunting ground formed under this Article must organize, adopt rules and regulations for the operation of said hunting grounds, and be recognized by the Wildlife Resources Commission before such hunting grounds are put into operation under this Article;

(3) The Wildlife Resources Commission will list and assist in advertising such public hunting grounds as are formed under this Article, subject to such rules and regulations as may be adopted by the Wildlife Resources Commission from time to time, and in accordance with the North Carolina Game Law and this Article. The Wildlife Resources Commission will furnish at cost to the owners of public hunting grounds posters to be used in posting such lands, such posters to state that the lands are posted under this section of the North Carolina Game Law and in case of withdrawal of recognition by the Wildlife Resources Commission such posters shall be removed from the land affected within 10 days after notice to owner or owners;

(4) Owners of public hunting grounds shall require of each and every hunter the prescribed hunting licenses as set forth elsewhere in the North Carolina Game Law;

(5) The owners of public hunting grounds may require of each and every hunter a per day rate for hunting, rates to be approved by the Wildlife Resources Commission, said rates not to exceed four dollars ($4.00). In addition to charges for privileges of shooting game, landowners may

charge a dog hire when landowners furnish dogs, dogs to be furnished only by request of the hunter;

(6) When any group of owners of a public hunting ground, organized under this Article, decide to promote the hunting of certain kinds of game, said kinds of game used for stocking to be propagated in game breeding plants organized and operated under the game and other laws of North Carolina, the owner shall be permitted to charge hunters such fees and rates as are approved by the Wildlife Resources Commission;

(7) No hunter is allowed to quit the hunting grounds at the end of the day's or part of a day's hunting without seeing the authority who gave him permission to hunt on said hunting grounds and paying all accounts due said authority;

(8) No construction or interpretation shall be put on this section or any part thereof as to permit the sale of dead game killed in accordance with this Article, abrogate the bag limits, time of hunting, open and closed seasons as prescribed elsewhere in the North Carolina Game Law;

(9) No person shall hunt or discharge firearms upon any public hunting grounds organized under this section without being accompanied by one of the landowners or a personal representative of one landowner, or after securing, on the day of the hunt, or day preceding the hunt, written permission to hunt under the authority of this Article, said written permission to bear the name in full, age, and address of the hunter, under the penalty of being fined in the courts, upon conviction, not less than twenty-five dollars ($25.00) for each and every offense;

(10) When hunting grounds or any part thereof, organized and operated under this Article are used for purposes not consistent with the federal, State and local laws, the Wildlife Resources Commission shall withdraw recognition from the area of such parts thereof as are deemed advisable, and report the case to the proper civil officials. (1935, c. 486, s. 24; 1973, c. 1262, s. 18.)

Editor's Note. — The 1973 amendment substituted "Wildlife Resources Commission" for "Department of Conservation and Development" in the introductory paragraph, in subdivision (2), near the beginning of the first and second sentences of subdivision (3), and in subdivisions (5), (6) and (10). The amendment also substituted "Wildlife Resources Commission" for "Conservation Board" near the end of the introductory paragraph, for "Board" near the end of the first sentence of subdivision (3) and for "Board of Conservation and Development" near the end of subdivision (6), and substituted "Wildlife Resources Commission" for "Department" near the end of the second sentence of subdivision (3).

§ 113-109. Punishment for violation of Article. — (a) Any person, or group of persons, who takes, possesses, transports, buys, sells, offers for sale, or has in possession for sale or transportation, any wild bird, or wild animals, or any part thereof, or the nest or egg of any wild bird, in violation of any of the provisions of this Article, or who violates any other of the provisions of this Article, or who fails to perform any duty imposed upon him by this Article, or who violates any lawful order, rule or regulation relating to game birds and animals and game fish promulgated by the Wildlife Resources Commission shall be guilty of a misdemeanor and upon the first offense and conviction thereof shall be fined not less than ten dollars ($10.00) nor more than fifty dollars ($50.00) or imprisoned for not more than 30 days, unless a greater penalty be prescribed for the specific act or acts. Upon the second offense, a person convicted thereof shall be fined not less than thirty-five dollars ($35.00) nor more than two hundred dollars ($200.00), or by imprisonment for not more than six months, or both in the discretion of the court. Any person, firm, or corporation who buys or sells, or offers to buy or sell, game birds or game animals in

violation of the provisions of this Article shall, upon conviction thereof, be fined not less than fifty dollars ($50.00) or imprisoned for not more than 60 days, or both fined and imprisoned in the discretion of the court. In all cases of conviction under this Article, the court in which such conviction is had shall revoke and require the surrender of any hunting license then held by the person so convicted, which license shall be forwarded together with the record of such conviction to the Wildlife Resources Commission. Such revocation of license shall be mandatory for the remainder of the hunting-license year during which such conviction occurred, and any person whose license has been revoked who procures or uses any other hunting license, or hunts with gun or dogs without a license during this period shall be guilty of a misdemeanor, and shall, upon conviction, be fined not less than fifty dollars ($50.00) or imprisoned for not less than 30 days, and in addition shall have his license-buying privilege suspended for an additional year following such conviction. Any person who shall swear or affirm to any false statement in any application for a hunting license shall be deemed guilty of perjury and on conviction shall be subject to the punishment provided for in the crime of perjury.

(b) Any person who takes or attempts to take deer between sunset and sunrise with the aid of a spotlight or other artificial light on any highway or in any field, woodland, or forest, in violation of this Article shall, upon conviction, be fined for a first offense not more than two hundred fifty dollars ($250.00) or imprisoned for not more than 60 days or both in the discretion of the court, and for subsequent offenses shall, upon conviction, be fined not less than two hundred fifty dollars ($250.00) or imprisoned not more than 90 days or both in the discretion of the court. In any locality or area which is frequented or inhabited by wild deer, the flashing or display of any artificial light from roadway or public or private driveway so that the beam thereof is visible for a distance of as much as 50 feet from such roadway or driveway, or the flashing or display of artificial light at any place off such roadway or driveway, when either of such acts is accompanied by the possession of a firearm or a bow and arrow during the hours between sunset and sunrise, except as authorized herein for the taking of raccoon, opossums, or frogs, shall constitute prima facie evidence of a violation punishable under the provisions of the preceding sentence.

(c) It shall be unlawful for any person, or group of persons, to take, attempt to take, or have in possession doe (female) deer in violation of the provisions of Article 7 of Chapter 113 of the General Statutes. Any person who takes, attempts to take, or has in possession doe (female) deer in violation of this Article shall, upon conviction, be fined not less than one hundred dollars ($100.00) or imprisoned not less than 90 days, or both fined and imprisoned in the discretion of the court.

(d) Any person who shall take or attempt to take wild turkey or bear during the closed season thereon as established by the Wildlife Resources Commission, or any person who shall take or attempt to take wild turkey or bear during the open season as established by the Wildlife Resources Commission by the use of any unlawful means or method as defined in G.S. 113-104, shall, upon conviction, be fined not less than two hundred and fifty dollars ($250.00) or imprisoned for not less than 90 days, or both in the discretion of the court.

(e) Any person who shall take or kill or attempt to take or kill any deer from any boat or other floating device in violation of the provisions of this Article shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than fifty dollars ($50.00) nor more than one hundred dollars ($100.00), or imprisoned for not less than 30 days nor more than 60 days, in the discretion of the court. This subsection shall not apply to the counties of Beaufort, Bertie, Burke, Camden, Carteret, Cherokee, Chowan, Columbus, Craven, Cumberland, Currituck, Dare, Edgecombe, Gates, Hertford, Hoke, Lenoir, Martin,

Northampton, Pamlico, Pasquotank, Perquimans, Person, Robeson, Surry, Swain, Tyrrell, Washington, Wayne and Yadkin.

(f) The provisions of this section relating to penalties shall not apply in the case of deer killed while destroying crops on the land owned or leased by the person killing such deer. (1935, c. 486, s. 25; 1939, c. 235, s. 2; c. 269; 1941, c. 231, s. 2; c. 288; 1945, c. 635; 1949, c. 1205, s. 4; 1953, c. 1141; 1963, c. 147; c. 697, ss. 2, 3½; 1965, c. 616; 1967, c. 729; c. 1149, s. 1; 1971, c. 423, s. 1; c. 524; c. 899, s. 2; 1973, c. 677.)

Local Modification. — Buncombe: 1941, c. 156; Pitt: 1941, c. 285.

Editor's Note. — The 1973 amendment substituted "hunting-license year during which such conviction occurred" for "period for which the license was issued" in the fifth sentence of subsection (a).

Constitutionality. — Section 113-104 and the first sentence of subsection (b) of this section, protecting and managing wildlife, are within the legitimate interests of the State and in the public interest and are constitutional. State v. Lassiter, 13 N.C. App. 292, 185 S.E.2d 478 (1971).

The prima facie evidence rule of subsection (b) is constitutional and meets the requirement for constitutionality that there be a rational connection between the fact proved and the ultimate fact presumed so that the inference of the one from proof of the other is not unreasonable and arbitrary. State v. Lassiter, 13 N.C. App. 292, 185 S.E.2d 478 (1971).

Purpose of Section. — Section 113-104 and the first sentence of subsection (b) of this section have the purpose of controlling and managing the use and methods of taking wildlife. State v. Lassiter, 13 N.C. App. 292, 185 S.E.2d 478 (1971).

Section Is Clear. — Section 113-104 and the first sentence of subsection (b) of this section are clear and definite as to the persons within the scope of the sections and the acts which are penalized. State v. Lassiter, 13 N.C. App. 292, 185 S.E.2d 478 (1971).

"Taking". — The shooting and killing of a deer with a rifle is a "taking" within the intent and meaning of subsection (b). State v. Link, 13 N.C. App. 568, 186 S.E.2d 634 (1972).

Section 113-104 Punishes Same Offense. — Subsection (b) of this section does not create a distinct or separate criminal offense from that created and defined by § 113-104; rather it merely provides a greater punishment when the stated conditions are shown and proved by the State. State v. Lassiter, 13 N.C. App. 292, 185 S.E.2d 478 (1971).

Presumption Does Not Deprive Defendants of Rights. — The presumption in subsection (b) does not shift the burden of proof from the State to the defendants, or deprive them of due process of law or the presumption of innocence which remains with them until overcome by evidence of guilt beyond a reasonable doubt. State v. Lassiter, 13 N.C. App. 292, 185 S.E.2d 478 (1971).

The presumption in subsection (b) is not conclusive upon the jury; they may still under the law return a verdict in favor of the defendant. State v. Lassiter, 13 N.C. App. 292, 185 S.E.2d 478 (1971).

Applied in State v. Vaughan, 268 N.C. 105, 150 S.E.2d 31 (1966); State v. Lassiter, 9 N.C. App. 255, 175 S.E.2d 689 (1970).

§§ 113-109.1 to 113-109.5: Reserved for future codification purposes.

ARTICLE 7A.

Safe Distances for Hunting Migratory Wild Waterfowl.

§ 113-109.6. Hunting migratory wild waterfowl in the vicinity of another waterfowl blind. — It shall be unlawful for any person to hunt, shoot, take or intentionally disturb migratory wild waterfowl from a blind, boat, float, raft, mat or other buoyant craft or from any other location, position or device nearer than 500 yards to any other blind, boat, float, raft, mat or other buoyant craft, or other location, position or device which is permanently established for hunting of migratory wild waterfowl by the land or riparian owner or one with the written permission of said land or riparian owner; unless said person is hunting, shooting, taking or intentionally disturbing migratory wild waterfowl from a blind, boat, float, raft, mat or other buoyant craft or other location, position or device located on land owned or within the riparian water area of land owned

by said person or for which said person has written permission of the owner; except when such person is in active pursuit of a visible, crippled waterfowl which was legally shot by said person from a position to which said person was entitled. (1973, c. 823, s. 1.)

§ 113-109.7. Penalty for violation. — Any person who violates the provisions of G.S. 113-109.6 shall be deemed guilty of a trespass and such violation shall constitute a misdemeanor and subject the offender to a fine of not less than ten dollars ($10.00) nor more than two hundred and fifty dollars ($250.00) or confinement in jail for a period not to exceed five months or both in the discretion of the court. Upon conviction for a second violation of G.S. 113-109.6, the trial court shall immediately revoke the license of the violator for hunting privileges in North Carolina for the balance of the current open season and said violator shall not be eligible for a license granting hunting privileges in North Carolina during the current open season but may be eligible for license thereafter. (1973, c. 823, s. 1.)

§ 113-109.8. Article inapplicable to certain counties. — This Article shall not apply to Anson, Beaufort, Carteret, Currituck, Dare, Hyde, Montgomery, Onslow, and Tyrrell Counties. (1973, c. 823, ss. 1, 5; c. 926.)

Editor's Note. — The 1973 amendment inserted Currituck, Dare and Onslow in the list of counties.

ARTICLE 8.

Fox-Hunting Regulations.

§ 113-110: Repealed by Session Laws 1945, c. 217.

§ 113-110.1. Persons required to have fox-hunting licenses. — Any person engaging in fox hunting will be considered to be actively participating, and will be required to have purchased a hunting license, if he owns or handles dogs engaged in the fox hunt; if he is carrying firearms for the purpose of taking foxes, or if he is a member of an organized group formed for the purpose of participating in the fox hunt. Provided, however, persons who are observing a fox hunt, or who have stopped incidentally to witness a part of it, will not be considered active participants, and will not be required to have a license. (1953, c. 1133.)

§ 113-111. No closed season in certain counties. — It shall be lawful to hunt, take or kill foxes at any time by any lawful method in Alexander, Alleghany, Anson, Ashe, Avery, Cabarrus, Catawba, Davidson, Davie, Forsyth, Greene, Harnett, Haywood, Henderson, Iredell, Lenoir, Nash, Perquimans, Pitt, Rockingham, Rowan, Stanly, Stokes, Tyrrell, Union, Watauga, Wilkes, and Yadkin Counties, and in Bensalem, Sheffields, Ritters, Deep River, and Carthage townships in Moore County. (1931, c. 143, s. 5; 1933, c. 428; 1939, c. 319; 1943, c. 615; 1947, cc. 333, 802; 1949, c. 263; 1953, cc. 196, 197, 199, 200, 960, 989; 1955, cc. 184, 286, 508, 685, 1037, 1039, 1119, 1123; 1957, c. 742, s. 1; 1959, cc. 535, 536, 570; 1963, c. 830; 1965, c. 522; 1967, cc. 642, 922; 1971, c. 169, s. 1; c. 385, s. 1.)

Local Modification. — Granville: 1957, c. 1001; Pamlico: 1955, c. 504; Perquimans: 1965, c. 773, repealing 1963, c. 827; Sampson: 1959, c. 544.

§ 113-112. Police power of protectors in enforcing county laws relative to foxes. — All game protectors duly appointed by the Department of Natural and Economic Resources and all ex officio game protectors named in the North

Carolina Game Law shall be authorized and empowered as fully as is the sheriff and other local officers to enforce local and county laws relating to the open and closed seasons to hunt or protect red and grey foxes. (1931, c. 143, s. 5; 1973, c. 1262, s. 86.)

Editor's Note. — The 1973 amendment substituted "Department of Natural and Economic Resources" for "Department of Conservation and Development."

ARTICLE 9.

Federal Regulations on Federal Lands.

§ 113-113. Legislative consent; violation made a misdemeanor. — The consent of the General Assembly of North Carolina is hereby given to the making by the Congress of the United States, or under its authority, of all such rules and regulations as the federal government shall determine to be needful in respect to game animals, game and nongame birds, and fish on such lands in the western part of North Carolina as shall have been, or may hereafter be, purchased by the United States under the terms of the act of Congress of March 1, 1911, entitled "An act to enable any state to cooperate with any other state or states, or with the United States, for the protection of the watersheds of navigable streams, and to appoint a commission for the acquisition of lands for the purposes of conserving the navigability of navigable rivers" (36 U.S. Stat. at Large, p. 961), and acts of Congress supplementary thereto and amendatory thereof, and in or on the waters thereon.

Nothing in this section shall be construed as conveying the ownership of wildlife from the State of North Carolina or permit the trapping, hunting or transportation of any game animals, game or nongame birds and fish, by any person, firm or corporation, including any agency, department or instrumentality of the United States government or agents thereof, on the lands in North Carolina, as shall have been or may hereafter be purchased by the United States under the terms of any act of Congress, except in accordance with the provisions of Article 7 of this Subchapter.

Any person, firm or corporation, including employees or agents of any department or instrumentality of the United States government, violating the provisions of this section shall be guilty of a misdemeanor and shall be punished in the discretion of the court. (1915, c. 205; C. S., s. 2099; 1939, c. 79, ss. 1, 2.)

Editor's Note. — For comment on the 1939 amendment, see 17 N.C.L. Rev. 364.

Acceptance May Be Presumed. — Acceptance of such a grant as is made by this section may be presumed. Chalk v. United States, 114 F.2d 207 (1940).

Acceptance of Jurisdiction over Pisgah National Forest and Pisgah National Game Preserve. — A federal statute authorizing the President of the United States to designate areas set aside for protection of game and fish on lands purchased by the United States, and punishing the unlawful taking of game or fish, constituted an acceptance by the United States of the cession to it of jurisdiction over the Pisgah National Forest and the Pisgah National Game Preserve by a prior act of the legislature of North Carolina. Chalk v. United States, 114 F.2d 207 (4th Cir. 1940).

Limitation of Number of Deer Therein. — Where the United States acquired land by grant from North Carolina for the Pisgah National Forest and the Pisgah National Game Preserve, and the legislature of North Carolina enacted an act consenting that Congress should make rules and regulations with respect to animals, birds, and fish, and it was established that the deer herd on the Preserve was so large as to damage the Preserve, the United States could, without regard to State laws, limit the number of deer thereon. Chalk v. United States, 114 F.2d 207 (4th Cir. 1940).

ARTICLE 10.

Regulation of Fur Dealers; Licenses.

§ 113-114. Fur dealer's license; fees. — Every person, firm or corporation who engages in the business of buying and selling raw furs, pelts or skins of fur-bearing animals shall before beginning such business, and annually thereafter, obtain a license from the Department of Natural and Economic Resources. The fees for such licenses shall be as follows:

(1) For a resident statewide license, the sum of twenty-five dollars ($25.00). This license will entitle the holder to buy and sell furs in any or all of the counties in North Carolina.

(2) For a resident county license, the sum of ten dollars ($10.00). This license will entitle the holder to buy and sell furs only in the county designated in the license. The fee for each additional county shall be ten dollars ($10.00).

(3) For a resident county license which entitles the dealer to buy or sell only at a fixed place of business in the county of his residence, the sum of five dollars ($5.00).

(4) For a nonresident of the State, the sum of one hundred dollars ($100.00) for a statewide license.

These licenses shall be issued through the game protectors or agents of the Department of Natural and Economic Resources as a part of their official duties. The funds so received from the sale of the above licenses shall be deposited with the State Treasurer to the credit of the Department of Natural and Economic Resources and they shall be expended for the protection and promotion of the fur-bearing industry in North Carolina and for the administration and enforcement of this Article and for no other purpose. (1929, c. 333, ss. 1, 2; 1933, c. 337, s. 1; 1973, c. 1262, s. 86.)

Editor's Note. — The 1973 amendment substituted "Department of Natural and Economic Resources" for "Department of Conservation and Development."

§ 113-115. Annual report of furs bought. — Every person, firm or corporation who takes out a fur dealer's license shall report to the Department of Natural and Economic Resources on April 1 of each year and every year the total amount of furs bought by such dealer, including the species of fur-bearing animals and the number of each, and such other information as required by the Department of Natural and Economic Resources. (1929, c. 333, s. 3; 1973, c. 1262, s. 86.)

Editor's Note. — The 1973 amendment substituted "Department of Natural and Economic Resources" for "Department of Conservation and Development."

§ 113-116. What counties may levy tax. — No county, city or town shall have the right to levy any license on resident fur dealers except that the county in which such dealers or buyers maintain a place of business or residence may charge and collect from such dealers a license tax of not more than five dollars ($5.00) per annum. (1929, c. 333, s. 4; 1933, c. 337, s. 2.)

Second or Subsequent Violation of Subchapter IV of Chapter 113 of the General Statutes Requires Mandatory Rather Than Discretionary Suspension or Revocation of License. — See opinion of Attorney General to Mr. L.K. Thomas, Commercial and Sports Fisheries, Conservation and Development, 41 N.C.A.G. 767 (1972).

§ 113-117. Permits may be issued to nonresident dealers. — It shall be lawful for the Department of Natural and Economic Resources to issue permits to nonresident dealers for the purchase of raw furs from only statewide licensed fur dealers in North Carolina. (1929, c. 333, s. 5; 1933, c. 337, s. 3; 1935, c. 471, s. 1; 1973, c. 1262, s. 86.)

Editor's Note. — The 1973 amendment substituted "Department of Natural and Economic Resources" for "Department of Conservation and Development."

Cited in Simkins v. Moses H. Cone Mem. Hosp., 211 F. Supp. 628 (M.D.N.C. 1962).

§ 113-118. Licenses for each employee of dealer; fees; residence requirement. — All bona fide members of a resident firm or corporation and their bona fide regular employees, all such members and employees being residents of North Carolina, shall be required to take out a license showing their employment and shall pay therefor the sum of twenty-five dollars ($25.00) each: Provided that the employees of a resident firm or corporation operating under a county resident fur dealer's license shall be required to pay only the sum of ten dollars ($10.00). Applicants for resident fur dealer's license must have actually resided in the State for six months next before making application for such license. (1929, c. 333, s. 6; 1933, c. 337, s. 4; 1935, c. 471, s. 3.)

§ 113-119. Nonresident buying furs personally or through agent classed as nonresident fur dealer. — Any nonresident person, firm or corporation or any agent or person acting as agent therefor, who in any manner purchases or solicits to purchase furs in North Carolina, except as provided in G.S. 113-117, shall be subject to and shall procure from the Department of Natural and Economic Resources a nonresident fur dealer's license before he shall be entitled to purchase or solicit to purchase furs as above set out in this section. (1929, c. 333, s. 7; 1935, c. 471, s. 2; 1973, c. 1262, s. 86.)

Editor's Note. — The 1973 amendment substituted "Department of Natural and Economic Resources" for "Department of Conservation and Development."

§ 113-120. Violation a misdemeanor. — Any person, firm or corporation who shall violate any of the provisions of this Article shall be guilty of a misdemeanor and shall be fined not more than one hundred dollars ($100.00) or imprisoned not more than 60 days for the first offense, and on conviction of second violation of this Article such person, firm or corporation shall pay not less than two hundred dollars ($200.00) or be imprisoned not more than six months or both in the discretion of the court. (1929, c. 333, s. 8.)

ARTICLE 10A.

Trespassing upon "Posted" Property to Hunt, Fish or Trap.

§ 113-120.1. Trespass for purposes of hunting, etc., without written consent a misdemeanor. — Any person who willfully goes on the land, waters, ponds, or a legally established waterfowl blind of another upon which notices, signs or posters, described in G.S. 113-120.2, prohibiting hunting, fishing, or trapping, or upon which "posted" notices have been placed, to hunt, fish or trap without the written consent of the owner or his agent shall be guilty of a misdemeanor and punished by a fine of not less than fifteen dollars ($15.00) nor more than fifty dollars ($50.00) or by confinement in jail for not more than 30 days, in the discretion of the court, provided, that if a violation of this section be committed at nighttime between the hours of sunset and sunrise, the person so offending

shall be punished by a fine of not less than thirty dollars ($30.00) nor more than fifty dollars ($50.00) or by confinement in jail for not more than 30 days, in the discretion of the court. Provided, further, that no arrests under authority of this section shall be made without the consent of the owner or owners of said land, or their duly authorized agents in the following counties: Halifax, Onslow, Warren. (1949, c. 887, s. 1; 1953, c. 1226; 1965, c. 1134.)

Local Modification. — Avery, Mitchell and Watauga: 1967, c. 644.

Prohibited Activities. — This section prohibits hunting, fishing or trapping on properly posted lands or waters without the written consent of the owner or his agent, provided that in designated counties, including Halifax County, no arrest may be made for such violation without consent of the owner or his agent. State v. Manning, 3 N.C. App. 451, 165 S.E.2d 13 (1969).

Term "Owner" Does Not Include Lessee. — In a prosecution in Halifax County under this section for a trespass by fishing on properly posted lands and waters of a private club without the written consent of the owner or his agent, defendants' motion for nonsuit should be allowed where the State's evidence discloses that the private club is the lessee of the land under and around the lake upon which defendants were fishing, a lessee not being included within the term "owner" as used in § 113-130, and there being no showing that defendants were fishing without the written consent of the actual owner, or that the owner consented to their arrest, or that the private club was the agent of the owner for these purposes. State v. Manning, 3 N.C. App. 451, 165 S.E.2d 13 (1969).

Whether a body of water is a "private pond" is not relevant to a prosecution for trespass under this section, there being no requirement that a pond must be a "private pond" in order to post the notices and signs described in § 113-120.2. State v. Manning, 3 N.C. App. 451, 165 S.E.2d 13 (1969).

§ 113-120.2. Regulations as to posting of property. — The notices, signs, or posters described in G.S. 113-120.1 shall measure not less than 10 inches by 12 inches and shall be conspicuously posted on private lands not more than 500 yards apart close to and along the boundaries. At least one such notice, sign, or poster shall be posted on each side of such land, and one at each corner thereof, provided that said corner can be reasonably ascertained. For the purpose of prohibiting fishing, or the taking of fish by any means, in any stream, lake, or pond, it shall only be necessary that the signs, notices, or posters be posted along the stream or shoreline of a pond or lake at intervals of not more than 300 yards apart. (1949, c. 887, s. 2; 1953, c. 1226; 1965, c. 923.)

Whether a body of water is a "private pond" is not relevant to a prosecution for trespass under § 113-120.1, there being no requirement that a pond must be a "private pond" in order to post the notices and signs described in this section. State v. Manning, 3 N.C. App. 451, 165 S.E.2d 13 (1969).

§ 113-120.3. Mutilation, etc., of "posted" signs; posting signs without consent of owner or agent. — Any person who shall mutilate, destroy or take down any "posted," "no hunting" or similar notice, sign or poster on the lands, waters, or legally established waterfowl blind of another, or who shall post such sign or poster on the lands, waters or legally established waterfowl blind of another, without the consent of the owner or his agent, shall be deemed guilty of a misdemeanor and shall be punished by a fine of not more than one hundred dollars ($100.00). (1949, c, 887, s. 3; 1953, c. 1226; 1969, c. 51.)

§ 113-120.4. Entrance on navigable waters, etc., for purpose of fishing, hunting or trapping not prohibited. — Nothing in this Article shall be construed to prohibit the entrance of any person upon navigable waters and the bays and sounds adjoining such waters for the purpose of fishing, hunting or trapping. (1949, c. 887, s. 4; 1953, c. 1226.)

ARTICLE 10B.

Liability of Landowners to Authorized Users.

§ 113-120.5. Liability of persons allowing others to use premises for certain purposes limited. — Except as provided in G.S. 113-120.6, an owner, lessee, occupant or person in control of premises who gives permission to another to hunt, fish, trap, camp, hike, or for other recreational use upon such premises does not thereby extend any assurance that the premises are safe for such purpose, or that a duty of care is owed or that he assumes responsibility for or incurs liability for any injury to person or property caused by an act of persons to whom the permission is granted, nor to any person or persons who enter without permission: Provided, that nothing contained in this section or Article shall be construed as limiting or nullifying the doctrine of attractive nuisance as the same prevails in this jurisdiction. (1963, c. 298.)

§ 113-120.6. What liability not affected. — This Article does not affect the liability which would otherwise exist for failure to guard, or to warn, against a dangerous condition, use, structure or activity; or for injury suffered in any case where permission to hunt, fish, trap, camp, hike, or for other recreational use was granted for a consideration other than the consideration, if any, paid to said landowner by the State or paid by other governmental unit; or for injury caused by acts of persons to whom permission to hunt, fish, trap, camp, hike, or for other recreational use was granted, or to other persons as to whom the person granting permission, or the owner, lessee, occupant, or person in control of the premises, owed a duty to keep the premises safe or to warn of danger. (1963, c. 298.)

§ 113-120.7. Meaning of "premises". — As used in this section the word "premises" includes lands, waters, and private ways and any buildings and structures on such lands, waters, and private ways. (1963, c. 298.)

ARTICLE 11.

Miscellaneous Provisions.

§ 113-121. Possession of firearm silencer, while hunting game, made unlawful. — It shall be unlawful for any person while hunting game in this State to have in his possession a shotgun, pistol, rifle, or any firearm equipped with a silencer of any type or kind or any device or mechanism designed to silence, muffle, or minimize the report of such firearm, whether such silencer or device or mechanism is separate from or attached to such firearm.

If any person shall be convicted of a violation of this section he shall be fined not less than one hundred dollars ($100.00) or imprisoned not less than 60 days, or both, in the discretion of the court. (1937, c. 152.)

§ 113-122. Sanctuary on Grandfather Mountain; molestation of game a misdemeanor. — Part of Grandfather Mountain situate in the counties of Avery, Caldwell and above the Yonahlossee Road on one side, and above the elevation of 4,000 feet on the other side, is established as a sanctuary for the preservation and protection of deer, squirrels and other wild animals (except wildcats), and wild turkeys, pheasants, eagles, hawks, ravens and all other bird life.

It shall be unlawful to trap, hunt, shoot, or otherwise kill, within the sanctuary established by the preceding paragraph, any deer, squirrels, or other wild animals (except wildcats), any wild turkeys, pheasants, eagles, hawks, ravens, or any kind of bird life. Any person violating any of the provisions of this section

shall be guilty of a misdemeanor. (1923, c. 191; C. S., ss. 2105(a), 2105(b); 1925, c. 212.)

§ 113-123. Assent of State to act of Congress providing for aid in wildlife restoration projects. — The State of North Carolina hereby assents to the provisions of the act of Congress entitled "An act to provide that the United States shall aid the states in wildlife restoration projects, and for other purposes," approved September 2, 1937 (Public, number 415, 75th Congress), and the North Carolina Department of Natural and Economic Resources is hereby authorized, empowered, and directed to perform such acts as may be necessary to the conduct and establishment of cooperative wildlife restoration projects, as defined in said act of Congress, in compliance with said act and rules and regulations promulgated by the Secretary of Agriculture thereunder; and no funds accruing to the State of North Carolina from license fees paid by hunters shall be diverted for any other purpose than the protection and propagation of game and wildlife in North Carolina and administration of the laws enacted for such purposes, which laws are and shall be administered by the [Wildlife Resources Commission] under the direction of the North Carolina Department of Natural and Economic Resources. (1939, c. 271; 1973, c. 1262, s. 86.)

Editor's Note. — The 1973 amendment substituted "Department of Natural and Economic Resources" for "Department of Conservation and Development" in two places. The editors have substituted "Wildlife Resources Commission," in brackets, for "Division of Game and Inland Fisheries" pursuant to the 1973 act, although the act did not expressly direct the substitution.

§ 113-124. Birds kept as pets or for breeding. — It shall be lawful to keep any wild bird in a cage as a domestic pet, or for the purposes of breeding, raising and domesticating. (1903 (Pr.), c. 337, ss. 6, 7; Rev., s. 1876; C. S., s. 2103.)

§ 113-125. Bird dogs running at large in certain counties. — It shall be unlawful for the owner or any person having the care of any pointer or setter dog to permit the same to run at large unmuzzled during the breeding season of quail, namely, from April 1 to September 1 of any year. When any pointer or setter dog shall be found ranging unmuzzled in the field or woods it shall be prima facie evidence that the owner of such pointer or setter dog has violated the provisions of this section, and upon conviction such owner or his agent shall be deemed guilty of a misdemeanor and shall be fined not more than fifty dollars ($50.00) or imprisoned not longer than 30 days.

This section shall apply only to the counties of Davidson, Durham, Forsyth, Greene, Guilford, Iredell, Johnston, Moore, Transylvania and Yancey. (1909, c. 775; C. S., s. 2132.)

§ 113-126. Deer; fire hunting; compelling testimony. — When more persons than one are engaged in committing the offense of fire hunting, anyone may be compelled to give evidence against all others concerned; and the witness, upon giving such information, shall be acquitted and held discharged from all penalties and pains to which he was subject by his participation in the offense. (1774, c. 103, P. R.; 1784, c. 212, ss. 1, 3, P. R.; 1801, s. 595, P. R.; R. C., c. 34, ss. 95, 96; 1856-7, c. 24; 1879, c. 92; Code, ss. 1058, 1059; 1905, c. 388; Rev., s. 3462; C. S., s. 2125; 1925, c. 194.)

Local Modification. — Currituck: C.S., s. 2125.

§ 113-126.1. Killing bear out of season. — Notwithstanding any other provisions of law, it shall be unlawful to take, trap, kill, or attempt to take, trap

or kill bears in North Carolina except during the open seasons therefor as established by regulations of the Wildlife Resources Commission; provided, that when bears are found in the act of destroying, or attempting to destroy, real or personal property, such property owners may take such action as appears reasonable and necessary, including killing the bear, to protect their real or personal property. When a bear is killed out of season by a property owner while such bear is destroying or attempting to destroy real or personal property, a Wildlife Resources Commission representative shall be notified within 12 hours of said killing by the person killing the bear and the carcass of such bear shall be disposed of by gift to some recognized charitable institution located in the county where the bear was killed; provided further, that nothing contained in this Subchapter shall be construed to authorize the hunting of bear with dogs during the closed season thereon.

Any person violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not more than one hundred dollars ($100.00) or imprisoned for not more than 60 days, or both fined and imprisoned, in the discretion of the court. (1967, c. 953; 1971, c. 423, s. 3; c. 809, s. 2.)

SUBCHAPTER IV. CONSERVATION OF FISHERIES RESOURCES.

ARTICLE 12.

General Definitions.

§ 113-127. Application of Article. — Unless the context clearly requires otherwise, the definitions in this Article apply throughout this Subchapter. (1965, c. 957, s. 2.)

§ 113-128. Definitions relating to agencies and their powers. — The following definitions apply to powers and administration of agencies charged with the conservation of marine and estuarine and wildlife resources:

(1) Commercial and Sports Fisheries Inspector. — An employee of the Department of Natural and Economic Resources sworn in as an officer and assigned the duties which include exercise of law-enforcement power. All references in statutes, regulations, contracts, and other legal and official documents to commercial fisheries inspectors apply to commercial and sports fisheries inspectors.

(2) Committee. — Commercial and Sports Fisheries Committee.

(3) Department. — Department of Natural and Economic Resources.

(4) Executive Director. — Executive Director, North Carolina Wildlife Resources Commission.

(5) Inspector. — Commercial and sports fisheries inspector.

(6) Notice; Notify. — Where it is required that notice be given an agency of a situation within a given number of days, this places the burden on the person giving notice to make sure that the information is received in writing by a responsible member of the agency within the time limit.

(7) Protector. — Wildlife protector.

(8) Secretary. — Secretary of Natural and Economic Resources.

(9) Wildlife Protector. — An employee of the North Carolina Wildlife Resources Commission sworn in as an officer and assigned to duties which include exercise of law-enforcement powers.

(10) Wildlife Resources Commission. — North Carolina Wildlife Commission as established by Article 24 of Chapter 143 of the General Statutes of North Carolina and as modified by any amendments which became effective prior to 1974. (1965, c. 957, s. 2; 1973, c. 1262, s. 28.)

Cross References. — As to the organization of the Department of Natural and Economic Resources, see §§ 143B-275 through 143B-279. As to the Wildlife Resources Commission, see § 143B-281. As to the Marine Fisheries Commission, see §§ 143B-286 through 143B-289. As to the Commercial and Sports Fisheries Committee, see §§ 143B-325 through 143B-327.

Editor's Note. — The 1973 amendment rewrote this section.

§ 113-129. Definitions relating to resources. — The following definitions apply in the description of the various marine and estuarine and wildlife resources:

(1) Bushel. — A dry measure containing 2,150.42 cubic inches.

(2) Coastal Fisheries. — Any and every aspect of cultivating, taking, possessing, transporting, processing, selling, utilizing, and disposing of fish taken in coastal fishing waters, whatever the manner or purpose of taking, except for the regulation of inland game fish in coastal fishing waters which is vested in the Wildlife Resources Commission; and all such dealings with fish, wherever taken or found, by a person primarily concerned with fish taken in coastal fishing waters so as to be placed under the administrative supervision of the Department. Provided, that the Department is given no authority over the taking of fish in inland fishing waters. Except as provisions in this Subchapter or in regulations of the Marine Fisheries Commission authorized under this Subchapter may make such reference inapplicable, all references in statutes, regulations, contracts, and other legal or official documents to commercial fisheries apply to coastal fisheries.

(3) Coastal Fishing. — All fishing in coastal fishing waters. Except as provisions in this Subchapter or in regulations of the Department of Natural and Economic Resources authorized under this Subchapter may make such references inapplicable, all references in statutes, regulations, contracts, and other legal or official documents to commercial fishing apply to coastal fishing.

(4) Coastal Fishing Waters. — The Atlantic Ocean; the various coastal sounds; and estuarine waters up to the dividing line between coastal fishing waters and inland fishing waters agreed upon by the Department and the Wildlife Resources Commission. Except as provisions in this Subchapter or changes in the agreement between the Department and the Wildlife Resources Commission may make such reference inapplicable, all references in statutes, regulations, contracts, and other legal or official documents to commercial fishing waters apply to coastal fishing waters.

(5) Crustaceans. — Crustacea, specifically including shrimp and hard- and soft-shelled crabs.

(6) Fisheries Resources. — Marine and estuarine resources and such wildlife resources as relate to fish.

(7) Fish; Fishes. — All marine mammals; all shellfish; all crustaceans; and all other fishes.

(8) Game Fish. — Inland game fish and such other game fish in coastal fishing waters as may be regulated by the Department.

(9) Inland Fishing Waters. — All inland waters except private ponds; and all waters connecting with or tributary to coastal sounds or the ocean extending inland from the dividing line between coastal fishing waters and inland fishing waters agreed upon by the Department and the Wildlife Resources Commission.

(10) Inland Game Fish. — Those species of freshwater fish, wherever found, and migratory saltwater fish, when found in inland fishing waters, as to which there is an important element of sport in taking and which are denominated as game fish in the regulations of the Wildlife Resources Commission. No species of fish of commercial importance

not classified as a game fish in commercial fishing waters as of January 1, 1965, may be classified as an inland game fish in coastal fishing waters without the concurrence of the Department.

(11) Marine and Estuarine Resources. — All fish, except inland game fish, found in the Atlantic Ocean and in coastal fishing waters; all fisheries based upon such fish; all uncultivated or undomesticated plant and animal life, other than wildlife resources, inhabiting or dependent upon coastal fishing waters; and the entire ecology supporting such fish, fisheries, and plant and animal life.

(12) Nongame Fish. — All fish found in inland fishing waters other than inland game fish.

(13) Private Pond. — A body of water arising within and lying wholly upon the lands of a single owner or a single group of joint owners or tenants in common, and from which fish cannot escape, and into which fish of legal size cannot enter from public waters at any time.

(14) Shellfish. — Mollusca, specifically including oysters, clams, mussels, and scallops.

(15) Wild Animals. — Game animals; fur-bearing animals; and such other wild mobile creatures included in the definition of wildlife resources which in the discretion of the Wildlife Resources Commission need protection or regulation in the interests of conservation of wildlife resources.

(16) Wildlife. — Wild animals; wild birds; all fish found in inland fishing waters; and inland game fish. Unless the context clearly requires otherwise, the definitions of wildlife, wildlife resources, wild animals, wild birds, fish, and the like are deemed to include species normally wild, or indistinguishable from wild species, which are raised or kept in captivity.

(17) Wildlife Resources. — All wild birds; all wild mammals other than marine mammals found in coastal fishing waters; all fish found in inland fishing waters, including migratory saltwater fish; all inland game fish; all uncultivated or undomesticated plant and animal life inhabiting or depending upon inland fishing waters; waterfowl food plants wherever found, except that to the extent such plants in coastal fishing waters affect the conservation of marine and estuarine resources the Department is given concurrent jurisdiction as to such plants; all undomesticated terrestrial creatures; and the entire ecology supporting such birds, mammals, fish, plant and animal life, and creatures. (1965, c. 957, s. 2; 1973, c. 1262, ss. 18, 28.)

Editor's Note. — The 1973 amendment substituted "Marine Fisheries Commission" for "Board" in the last sentence of subdivision (2), substituted "Department of Natural and Economic Resources" for "Board" in the second sentence of subdivision (3) and substituted "Wildlife Resources Commission" for "Commission" throughout the section.

Whether a body of water is a "private pond" is not relevant to a prosecution for trespass under § 113-120.1, there being no requirement that a pond must be a "private pond" in order to post the notices and signs described in § 113-120.2. State v. Manning, 3 N.C. App. 451, 165 S.E.2d 13 (1969).

§ 113-130. Definitions relating to activities of public. — The following definitions apply to activities of the public in regard to marine and estuarine and wildlife resources:

(1) Individual. — A human being.

(2) Owner; Ownership. — As for personal property, refers to persons having beneficial ownership and not to those holding legal title for security; as for real property, refers to persons having the present right of

control, possession, and enjoyment, whether as life tenant, fee holder, beneficiary of a trust, or otherwise. Provided, that this definition does not include lessees of property except where the lease arrangement is a security device to facilitate what is in substance a sale of the property to the lessee.

(3) Person. — Any individual; or any partnership, firm, association, corporation, or other group of individuals capable of suing or being sued as an entity.

(4) Resident. — In the case of individuals, one who, at the time in question, has resided in North Carolina for the preceding six months or has been domiciled in North Carolina for the preceding 60 days, provided that when resort must be had to the circumstances of domicile rather than the mere fact of residence, such individual shall sign a certificate on a form supplied by the Wildlife Resources Commission stating the necessary facts and intent to constitute legal domicile within the State for the preceding 60 days. In the case of corporations, a corporation which is chartered under the laws of North Carolina and has its principal office within the State.

(5) To Fish. — To take fish.

(6) To Sell; Sale. — Includes a sale or exchange of property, or an offer or attempt to sell or exchange — for money or any other valuable consideration.

(7) To Take. — All operations during, preparatory, and subsequent to an attempt — whether successful or not — to capture, kill, pursue, or otherwise harm or reduce to possession any fisheries resources.

(8) Vessel. — Every description of watercraft, other than a seaplane on the water, used or capable of being used as a means of transportation on water. (1965, c. 957, s. 2; 1971, c. 705, s. 3; 1973, c. 1262, s. 18.)

Editor's Note. — The 1973 amendment substituted "Wildlife Resources Commission" for "Commission" in subdivision (4).

Term "Owner" Does Not Include Lessee. — In a prosecution in Halifax County under § 113-120.1 for a trespass by fishing on properly posted lands and waters of a private club without the written consent of the owner or his agent, defendants' motion for nonsuit should be allowed where the State's evidence discloses that the private club is the lessee of the land under and around the lake upon which defendants were fishing, a lessee not being included within the term "owner" as used in this section, and there being no showing that defendants were fishing without the written consent of the actual owner, or that the owner consented to their arrest, or that the private club was the agent of the owner for these purposes. State v. Manning, 3 N.C. App. 451, 165 S.E.2d 13 (1969).

ARTICLE 13.

Jurisdiction of Fisheries Agencies.

§ 113-131. Resources belong to public; stewardship of conservation agencies. — The marine and estuarine and wildlife resources of the State belong to the people of the State as a whole. The Department and the Wildlife Resources Commission are charged with stewardship of these resources. (1965, c. 957, s. 2; 1973, c. 1262, s. 18.)

Editor's Note. — The 1973 amendment substituted "Wildlife Resources Commission" for "Commission."

§ 113-132. Jurisdiction of fisheries agencies. — (a) The Department has jurisdiction over the conservation of marine and estuarine resources. Except as

may be otherwise provided by law, it has jurisdiction over all activities connected with the conservation and regulation of marine and estuarine resources.

(b) The Wildlife Resources Commission has jurisdiction over the conservation of wildlife resources. Except as may be otherwise provided by law, it has jurisdiction over all activities connected with the conservation and regulation of wildlife resources.

(c) Notwithstanding the provisions of this Article, the Department and the Wildlife Resources Commission do not have jurisdiction over matters with respect to which jurisdiction may now or hereafter be vested in the Environmental Management Commission, the Department of Natural and Economic Resources, or the Commission for Health Services.

(d) To the extent that the grant of jurisdiction to the Department and the Wildlife Resources Commission may overlap, the Department and the Wildlife Resources Commission are granted concurrent jurisdiction. In cases of conflict between actions taken or regulations promulgated by either agency, as respects the activities of the other, pursuant to the dominant purpose of such jurisdiction, the Department and the Wildlife Resources Commission are empowered to make agreements concerning the harmonious settlement of such conflict in the best interests of the conservation of the marine and estuarine and wildlife resources of the State. In the event the Department and the Wildlife Resources Commission cannot agree, the Governor is empowered to resolve the differences.

(e) Those coastal fishing waters in which are found a significant number of freshwater fish, as agreed upon by the Department and the Wildlife Resources Commission, may be denominated joint fishing waters. Such waters are deemed coastal fishing waters from the standpoint of laws and regulations administered by the Department and are deemed inland fishing waters from the standpoint of laws and regulations administered by the Wildlife Resources Commission. The Marine Fisheries Commission and the Wildlife Resources Commission may make joint regulations governing the responsibilities of each agency and modifying the applicability of licensing and other regulatory provisions as may be necessary for rational and compatible management of the marine and estuarine and wildlife resources in such joint fishing waters.

(f) The granting of jurisdiction in this section pertains to the power of agencies to enact regulations and ordinances. Nothing in this section or in G.S. 113-138 is designed to prohibit law-enforcement officers who would otherwise have jurisdiction from making arrests or in any manner enforcing the provisions of this Subchapter. (1965, c. 957, s. 2; 1973, c. 476, s. 128; c. 1262, ss. 18, 28, 38.)

Editor's Note. — The first 1973 amendment substituted "Commission for Health Services" for "State Board of Health" in subsection (c).

The second 1973 amendment substituted "Wildlife Resources Commission" for "Commission" in subsections (b), (c), (d) and (e), substituted "Environmental Management Commission" for "Board and Department of Water Resources" and "Department of Natural and Economic Resources" for "State Stream Sanitation Committee" in subsection (c) and substituted "Marine Fisheries Commission" for "Board" in the last sentence of subsection (e).

§ 113-133. Abolition of local coastal fishing laws. — The enjoyment of the marine and estuarine resources of the State belongs to the people of the State as a whole and is not properly the subject of local regulation. As the Department is charged with administering the governing statutes and promulgating regulations in a manner to reconcile as equitably as may be the various competing interests of the people as regards these resources, considering the interests of those whose livelihood depends upon full and wise use of renewable and nonrenewable resources and also the interests of the many whose approach is recreational, all special, local, and private acts and ordinances regulating the conservation of marine and estuarine resources are repealed. Nothing in this

section is intended to invalidate local legislation or local ordinances which exercise valid powers over subjects other than the conservation of marine and estuarine resources, even though an incidental effect may consist of an overlapping or conflict of jurisdiction as to some particular provision not essential to the conservation objectives set out in this Subchapter. (1965, c. 957, s. 2.)

Regulation and Control of Marine and Estuarine Resources Is Exclusively within the State of North Carolina and Local Regulations or Ordinances Are Not Authorized. — See opinion of Attorney General to Mr. Clifton L. Moore, Jr., 41 N.C.A.G. 642 (1971).

§ 113-134. Regulations. — The Marine Fisheries Commission or the Wildlife Resources Commission, as appropriate, are empowered to promulgate regulations implementing the provisions of this Chapter, within the limits of the jurisdiction granted in this Article. (1915, c. 84, s. 21; 1917, c. 290, s. 7; C. S., s. 1878; 1925, c. 168, s. 2; 1935, c. 35; 1945, c. 776; 1953, cc. 774, 1251; 1963, c. 1097, s. 1; 1965, c. 957, s. 2; 1973, c. 1262, s. 28.)

Editor's Note. — The 1973 amendment substituted "Marine Fisheries Commission or the Wildlife Resources Commission, as appropriate," for "Department and the Commission."

§ 113-134.1. Jurisdiction over marine resources in Atlantic Ocean. — The State of North Carolina shall exercise all such jurisdiction it possesses under the State Constitution necessary for the maintenance, preservation and protection of all marine fisheries resources from their inland reaches to a line drawn parallel to the entire coastline at a distance of 200 miles or where the water depth reaches 100 fathoms, whichever is greater. The Department of Natural and Economic Resources is hereby given the authority to promulgate the rules and regulations necessary to carry out the intent of this section; provided, however, that no such rule or regulation shall become effective until it has been approved by the General Assembly. Such rules and regulations shall be designed to prevent substantial depletion or damaging of the various marine fisheries resources. Any violation of the rules and regulations promulgated under the authority of this section shall constitute a misdemeanor, punishable by imprisonment not to exceed two years, or by a fine not to exceed one thousand dollars ($1,000) or by both such fine and imprisonment. The rules and regulations adopted by the Department of Natural and Economic Resources pursuant to this section shall be enforced by the fisheries inspectors, in the same manner and with the same authority vested in them by Chapter 113 of the General Statutes. (1973, c. 1315.)

§ 113-135. General penalty for violating Subchapter or regulations. — Any person who violates any provision of this Subchapter or any regulation adopted by the Marine Fisheries Commission or the Wildlife Resources Commission, as appropriate, pursuant to the authority of this Subchapter is guilty of a misdemeanor. Unless a different level of punishment is elsewhere set out, anyone convicted of such a misdemeanor may be fined not exceeding fifty dollars ($50.00). Noncriminal sanctions, such as license revocation or suspension, and exercise of powers auxiliary to criminal prosecution, such as seizure of property involved in the commission of an offense, do not constitute alternative levels of punishment so as to oust criminal liability. (1965, c. 957, s. 2; 1973, c. 1262, s. 28.).

Editor's Note. — The 1973 amendment substituted "Marine Fisheries Commission or the Wildlife Resources Commission, as appropriate," for "Department or the Commission" in the first sentence.

§ 113-136. Enforcement authority of inspectors and protectors; refusal to obey or allow inspection by inspectors and protectors. — (a) Inspectors and protectors are granted the powers of peace officers anywhere in this State in enforcing all matters within their respective subject-matter jurisdiction as set out in this section.

(b) The jurisdiction of inspectors extends to all matters within the jurisdiction of the Department of Natural and Economic Resources as set out in this Subchapter and to all other matters within the jurisdiction of the Department of Natural and Economic Resources.

(c) The jurisdiction of protectors extends to all matters within the jurisdiction of the Wildlife Resources Commission, whether set out in this Chapter, Chapter 75A, Chapter 143, or elsewhere.

(d) Inspectors and protectors are additionally authorized to arrest without warrant under the terms of G.S. 15A-401(b) for felonies, for breaches of the peace, for assaults upon them or in their presence, and for other offenses evincing a flouting of their authority as enforcement officers or constituting a threat to public peace and order which would tend to subvert the authority of the State if ignored. In particular, they are authorized, subject to the direction of their administrative superiors, to arrest for violations of G.S. 14-223, 14-225, 14-269, and 14-277.

(e) Inspectors and protectors may serve warrants, subpoenas, and other process connected with any cases within their subject-matter jurisdiction. In the exercise of their law-enforcement powers, inspectors and protectors are subject to provisions relating to police officers in general set out in Chapter 15 and elsewhere.

(f) Inspectors and protectors are authorized to stop temporarily any persons they reasonably believe to be engaging in activity regulated by their respective agencies to determine whether such activity is being conducted within the requirements of the law, including license requirements. If the person stopped is in a motor vehicle being driven at the time and the inspector or protector in question is also in a motor vehicle, the inspector or protector is required to sound a siren or activate a special light, bell, horn, or exhaust whistle approved for law-enforcement vehicles under the provisions of G.S. 20-125(b) or 20-125(c).

(g) Protectors may not temporarily stop or inspect vehicles proceeding along primary highways of the State without clear evidence that someone within the vehicle is or has recently been engaged in an activity regulated by the Wildlife Resources Commission. Inspectors may temporarily stop vehicles, boats, airplanes, and other conveyances upon reasonable grounds to believe that they are transporting taxable seafood products; they are authorized to inspect any seafood products being transported to determine whether they were taken in accordance with law and to require exhibition of any applicable license, tax receipts, permits, bills of lading, or other identification required to accompany such seafood products.

(h) The refusal of any person to stop in obedience to the implicit or explicit directions of an inspector or protector acting under the authority of this section is unlawful. It is unlawful to refuse to exhibit upon request any license, permit, tax receipt, certificate, or identification required to be carried by any law or regulation as to which inspectors and protectors have enforcement jurisdiction. It is unlawful to refuse to allow inspectors and protectors to inspect weapons, equipment, fish, or wildlife regulated by any law or regulation as to which inspectors and protectors have enforcement jurisdiction.

(i) Nothing in this section authorizes searches within the curtilage of a dwelling or of the living quarters of a vessel in contravention of constitutional prohibitions against unreasonable searches and seizures.

(j) The refusal of any person to stop in obedience to explicit directions of an inspector or protector acting under the authority of this section is unlawful. A violation of this subsection (j) is punishable by a fine of not less than fifty dollars ($50.00) nor more than two hundred dollars ($200.00) or imprisonment of up to 30 days or both.

(k) It is unlawful to refuse to exhibit upon request any license, permit, tax receipt, certificate, or identification required to be carried by any law or regulation as to which inspectors and protectors have enforcement jurisdiction. It is unlawful to refuse to allow inspectors and protectors to inspect weapons, equipment, fish, or wildlife regulated by any law or regulation as to which inspectors and protectors have enforcement jurisdiction.

(l) Nothing in this section authorizes searches within the curtilage of a dwelling or of the living quarters of a vessel in contravention of constitutional prohibitions against unreasonable searches and seizures. (1915, c. 84, s. 6; 1917, c. 290, s. 2; C. S., s. 1885; 1935, c. 118; 1957, c. 1423, s. 2; 1965, c. 957, s. 2; 1973, c. 1262, ss. 18, 28, 86; c. 1286, s. 17; c. 1297.)

Editor's Note. — The first 1973 amendment substituted "Department of Natural and Economic Resources" for "Department" and for "Division of Commercial and Sports Fisheries" in subsection (b) and substituted "Wildlife Resources Commission" for "Commission" in subsections (c) and (g).

The second 1973 amendment, effective July 1, 1975, substituted "G.S. 15A-401(b)" for "§ 15-41" in the first sentence of subsection (d) and deleted "14-224" in the second sentence of subsection (d).

The third 1973 amendment added the subsections designated (j), (k) and (l) above. The subsections were designated (h), (i) and (j) in the amendatory act and were probably intended to replace present subsections (h) and (i), but the act provides that this section "is hereby amended by adding the following new subsections."

Session Laws 1973, c. 1286, s. 29, contains a severability clause.

Session Laws 1973, c. 1286, s. 31, provides:

"Sec. 31. This act becomes effective on July 1, 1975, and is applicable to all criminal proceedings begun on and after that date and each provision is applicable to criminal proceedings pending on that date to the extent practicable, except § 12 [§§ 15-176.3 through 15-176.5] of this act which becomes effective on July 1, 1974."

§ 113-137. Search on arrest; seizure and confiscation of property; disposition of confiscated property. — (a) Every inspector or protector who arrests a person for an offense as to which he has enforcement jurisdiction is authorized to search the person arrested and the surrounding area for weapons and for fruits, instrumentalities, and evidence of any crime for which the person arrested is or might have been arrested.

(b) Every inspector or protector who issues a citation instead of arresting a person, in cases in which the inspector or protector is authorized to arrest, may seize all lawfully discovered evidence, fruits, and instrumentalities of any crime as to which he has arrest jurisdiction and probable cause.

(c) Every inspector or protector who in the lawful pursuit of his duties has probable cause for believing he has discovered a violation of the law over which he has jurisdiction may seize in connection therewith any fish, wildlife, weapons, equipment, vessels, or other evidence, fruits, or instrumentalities of the crime, notwithstanding the absence of any person in the immediate area subject to arrest or the failure or inability of the inspector or protector to capture or otherwise take custody of the person guilty of the violation in question. Where the owner of such property satisfies the Secretary or the Executive Director, as the case may be, of his ownership and that he had no knowledge or culpability in regard to the offense involving the use of his property, such property must be returned to the owner. If after due diligence on the part of employees of the

Department or the Wildlife Resources Commission, as the case may be, the identity or whereabouts of the violator or of the owner of the property seized cannot be determined, such property may be sold by the Department or the Wildlife Resources Commission in accordance with the provisions of this section.

(d) The Department and the Wildlife Resources Commission may provide by regulation for summary disposition of live or perishable fish seized by an inspector or protector pursuant to subsection (b) or (c) or pursuant to a search authorized under subsection (a). If the property seized consists of live fish which may again be placed to the benefit of the public on public grounds or in public waters, the inspector or protector may require the person in possession of the seized live property to transport it such distance as may be necessary to effect placement on appropriate grounds or waters. In the event of refusal by the person in question to transport the property, the inspector or protector must take appropriate steps to effect such transportation. The steps may include seizure of any conveyance or vessel of the person refusing to transport the property. Where a conveyance or vessel is seized, it is to be safeguarded by the inspector or protector seizing it pending trial and it becomes subject to the orders of the court. Such transportation costs as may be borne by the Department or by the Wildlife Resources Commission, as the case may be, may be collected by the agency from the proceeds of the sale of any other property of the defendant seized and sold in accordance with the provisions of this section.

Except as provided in subsection (g), where the seizure consists of edible fish which is not alive, may not live, or may not otherwise benefit conservation objectives if again placed on public grounds or in public waters, the inspector or protector must dispose of the property by turning it over to one or more appropriate public or charitable or nonprofit agencies or institutions, in accordance with the directions of his administrative superiors.

(e) Except as otherwise specifically provided in this section, all property seized must be safeguarded pending trial by the inspector or protector initiating the prosecution. Upon a conviction the property seized in connection with the offense in question is subject to the disposition ordered by the court. Upon an acquittal, property seized must be returned to the defendant or established owner, except:

(1) Where the property was summarily disposed of in accordance with subsection (d);

(2) Where possession of the property by the person to whom it otherwise would be returned would constitute a crime; and

(3) Where the property seized has been sold in accordance with subsection (g). In this event the net proceeds of the sale must be returned to the defendant or established owner, as the case may be.

Where property seized summarily under subsection (d) is not available for return, an acquitted defendant or established owner is entitled to no compensation where there was probable cause for the action taken.

In safeguarding property seized pending trial, an inspector or protector is authorized in his discretion, subject to orders of his administrative superiors, to make his own provisions for storage or safekeeping or to deposit the property with the sheriff of the county in which the trial is to be held for custody pending trial. In the event the mode of safekeeping reasonably selected by the inspector or protector entails a storage or handling charge, such charge is to be paid as follows:

(1) By the defendant if he is convicted but the court nevertheless orders the return of the property to the defendant;

(2) From the proceeds of the sale of the property if the property is sold under court order or in accordance with the provisions of this section; or

(3) By the Department or by the Wildlife Resources Commission, as the case may be, if no other provision for payment exists.

(f) Subject to orders of his administrative superiors, an inspector or protector in his discretion may leave property which he is authorized to seize in the possession of the defendant with the understanding that such property will be subject to the orders of the court upon disposition of the case. Willful failure or inexcusable neglect of the defendant to keep such property subject to the orders of the court is a misdemeanor punishable in the discretion of the court. In exercising his discretion, the inspector or protector should not permit property to be retained by the defendant if there is any substantial risk of its being used by the defendant in further unlawful activity.

(g) Where a prosecution involving seized saleable fish is pending and such fish are perishable or seasonal, the inspector or protector may apply to the court in which the trial is pending for an order permitting sale prior to trial. As used in this subsection, seasonal fish are those which command a higher price at one season than at another so that economic loss may occur if there is a delay in the time of sale. When ordered by the court, such sale prior to trial must be conducted in accordance with the order of the court or in accordance with the provisions of this section. The net proceeds of such sale are to be deposited with the court and are subject to the same disposition as would have been applicable to other types of property seized. Where sale is not lawful or otherwise not practicable or where prosecution is not pending, disposal of the fish is in accordance with subsection (d).

(h) Pending trial, the defendant or the established owner of any nonperishable and nonconsumable property seized may apply to the court designated to try the offense for return of the property. The property must be returned pending trial if:

(1) The court is satisfied that return of the property will not facilitate further violations of the law; and

(2) The claimant posts a bond for return of the property at trial in an amount double the value of the property as assessed by the court.

(i) Upon conviction of any defendant for a violation of the laws or regulations administered by the Department or the Wildlife Resources Commission under the authority of this Subchapter, the court in its discretion may order seizure and sale of all weapons, equipment, vessels, conveyances, fish, and other evidence, fruits, and instrumentalities of the offense in question — whether or not seized or made subject to the orders of the court pending trial. The defendant may appeal the reasonableness of any order of seizure and sale. Unless otherwise specified in the order of the court, such sales are to be held by the Department or by the Wildlife Resources Commission, as the case may be.

The Marine Fisheries Commission and the Wildlife Resources Commission may by regulation provide for an orderly public sale procedure of property which it may sell under the provisions of this section. Such procedure may include turning the property to be sold over to some other agency for sale, provided that the provisions of subsection (j) are complied with and there is proper accounting for the net proceeds of the sale. In the case of property unlikely to sell for a sufficient amount to offset the costs of sale, the Marine Fisheries Commission and Wildlife Resources Commission may provide for destruction of the property.

(j) Except as provided in subsection (d), or in the case of property seized under the provisions of subsection (c) or in any case where it appears that a person not a defendant has an interest in any property to be sold, destroyed, or otherwise disposed of, the Marine Fisheries Commission and the Wildlife Resources Commission must provide for public notice of the description of the property and the circumstances of its seizure for a sufficient period prior to the time set for sale or other disposition to allow innocent owners or lienholders to assert their claims. The validity of such claims are to be determined by the trial court in the event there is or has been a prosecution in connection with the seizure of the property. Where there has been no prosecution, the validity of

such claims must be determined by the Secretary or by the Executive Director, as the case may be. Where there has been a sale under subsection (g), the provisions of this subsection apply to the net proceeds of the sale.

(k) Except as provided in subdivision (e)(3) and subsection (j), the net proceeds of all sales made pursuant to this section must be deposited in the school fund of the county in which the property was seized. (1915, c. 84, s. 6; 1917, c. 290, s. 2; C. S., s. 1885; 1935, c. 118; 1953, c. 1134; 1957, c. 1423, s. 2; 1961, c. 1189, s. 4; 1965, c. 957, s. 2; 1973, c. 1262, ss. 18, 28.)

Editor's Note. — The 1973 amendment substituted "Secretary" for "Commissioner" in subsections (c) and (j), substituted "Wildlife Resources Commission" for "Commission" in subsections (c), (d), (e), (i) and (j), substituted "Department" for "Board" near the beginning of the first sentence of subsection (d) and substituted "Marine Fisheries Commission" for "Board" in the second paragraph of subsection (i) and in subsection (j).

§ 113-138. Enforcement jurisdiction of special officers. — The Marine Fisheries Commission and the Wildlife Resources Commission by regulation may confer law-enforcement powers over matters within their jurisdiction upon the employees of any local, State, or federal public agency who possess special law-enforcement jurisdiction that would not otherwise extend to the subject matter of this Subchapter. The Department of Natural and Economic Resources and Wildlife Resources Commission may confer such powers or not to any particular officers or class of officers as may be convenient or desirable in the interests of conservation of marine and estuarine and wildlife resources. Such conferring of powers does not constitute the appointment of any such special enforcement officer to an additional office and no oath need be taken. (1965, c. 957, s. 2; 1973, c. 1262, ss. 18, 28.)

Editor's Note. — The 1973 amendment substituted "Marine Fisheries Commission" for "Board" in the first sentence and "Department of Natural and Economic Resources" for "Board" in the second sentence and substituted "Wildlife Resources Commission" for "Commission" in the first and second sentences.

§ 113-139. Search warrants. — (a) Inspectors and protectors are authorized to obtain and execute search warrants within the limitations of this section from any official authorized to issue search warrants in accordance with the procedure in Article 11 of Chapter 15A of the General Statutes.

(b) Search warrants which inspectors may execute must be for evidence, fruits, or instrumentalities of some criminal offense as to which the Department is granted exclusive or primary jurisdiction in this Subchapter.

(c) Search warrants which protectors may execute must be for evidence, fruits, or instrumentalities of some criminal offense as to which the Wildlife Resources Commission is granted exclusive or primary jurisdiction in this Chapter or elsewhere, including Chapters 75A and 143. (1969, c. 347; 1973, c. 1262, s. 18; c. 1286, s. 18.)

Editor's Note. — The first 1973 amendment substituted "Wildlife Resources Commission" for "Commission" in subsection (c).

The second 1973 amendment, effective July 1, 1975, substituted "Article 11 of Chapter 15A" for "article 4 of chapter 15" in subsection (a).

Session Laws 1973, c. 1286, s. 29, contains a severability clause.

Session Laws 1973, c. 1286, s. 31, provides:

"Sec. 31. This act becomes effective on July 1, 1975, and is applicable to all criminal proceedings begun on and after that date and each provision is applicable to criminal proceedings pending on that date to the extent practicable, except § 12 [§§ 15-176.3 through 15-176.5] of this act which becomes effective on July 1, 1974."

§§ 113-140 to 113-150: Reserved for future codification purposes.

ARTICLE 14.

Commercial and Sports Fisheries Licenses and Taxes.

§ 113-151. Regulations of Marine Fisheries Commission. — The [Marine Fisheries Commission] is authorized to make reasonable rules and regulations governing the administration and enforcement of all license requirements and taxes prescribed in this Article. (1965, c. 957, s. 2; 1973, c. 1197, s. 2; c. 1262, s. 28.)

Editor's Note. — The above section was enacted as § 113-151.1 by Session Laws 1973, c. 1197, s. 2, but has been codified as amended § 113-151, because, as enacted, it was identical to the former first sentence of § 113-151. The former second sentence of § 113-151, relating to compensation of license agents, was omitted. The section codified as § 113-151.1 was enacted by Session Laws 1973, c. 1197, s. 1, as an amendment to § 113-151.

In the section as set out above, "Marine Fisheries Commission" has been substituted, in brackets, for "Board" pursuant to Session Laws 1973, c. 1262, s. 28 which expressly amended § 113-151.

§ 113-151.1. License agents. — The Secretary shall commission such persons as in his discretion he deems necessary to be license agents for the Department of Natural and Economic Resources; provided, that at least one such license agent shall be appointed in each county which contains or borders on coastal fishing waters. Such agents together with the Department of Natural and Economic Resources shall have the authority and duty to sell all licenses provided for by this Article. Agents shall be compensated not in excess of five percent (5%) of the license fees collected by them. (1973, c. 1197, s. 1; c. 1262, s. 28.)

Editor's note. — The 1973 amendment substituted "Secretary" for "Commissioner" in the first sentence and "Department of Natural and Economic Resources" for "Division of Commercial and Sports Fisheries" in the first and second sentences.

§ 113-152. Licensing of vessels; fees. — (a) The following vessels are subject to the licensing requirements of this section:

(1) All vessels engaged in commercial fishing operations in coastal fishing waters and

(2) All North Carolina vessels engaged in commercial fishing operations without the State which result in landing and selling fish in North Carolina. North Carolina vessels are those which have their primary situs in North Carolina. Motorboats with North Carolina numbers under the provisions of Chapter 75A of the General Statutes are deemed to have their primary situs in North Carolina; documented vessels which list a North Carolina port as home port are deemed to have their primary situs in North Carolina.

"Commercial fishing operations" are all operations preparatory to, during, and subsequent to the taking of fish:

(1) With the use of commercial fishing equipment or

(2) By any means, if a primary purpose of the taking is to sell the fish.

It is unlawful for the owner of a vessel subject to licensing requirements to permit it to engage in commercial fishing operations without having first procured the appropriate license. It is unlawful for anyone to command such a vessel engaged in commercial fishing operations without complying with the

provisions of this section and of regulations made under the authority of this Article. It is unlawful for anyone to command such a vessel engaged in commercial fishing operations that does not meet the license requirements of this Article or of regulations made under the authority of the Article, or without making reasonably certain that all persons on board are in compliance with the provisions of this Article and regulations made under the authority of this Article. It is unlawful to participate in any commercial fishing operation in connection with which there is a vessel subject to licensing requirements not meeting the licensing requirements under the provisions of this Article or of regulations made under the authority of this Article.

Nothing contained in this section shall require the licensing of any vessel used solely for clamming or oystering by a person not required to have a clam and oyster license under the provisions of G.S. 113-154. Spears or gigs shall not be deemed commercial fishing equipment unless used in an operation the purpose of which is the taking of fish for commercial purposes.

(b) Any license that may be required by this section is to be issued in the name of the owner of the vessel. It is unlawful for the owner to permit anyone who is not eligible to have the license issued to him in his own right to command such licensed vessel for the purpose of engaging in commercial fishing operations. It is unlawful for such an ineligible person to command a licensed vessel for such purposes. The license application for a menhaden vessel must state the name of the person in command of the vessel. Upon change in command of a menhaden vessel, the owner must notify the Secretary within 15 days. Upon change in ownership of any licensed vessel, the new owner must notify the Secretary within 15 days. The Marine Fisheries Commission may provide by regulation for replacement of lost license plates upon tender of the original license receipt or upon such other evidence as the Marine Fisheries Commission may deem sufficient. A fee not to exceed fifty cents (50¢) may be charged for replacement of a plate.

(c) Licenses are issued annually upon a calendar-year basis for vessels of various lengths (length measured straight through the cabin and along the deck, from end to end, excluding the sheer) and types as follows for the fees indicated:

(1) Vessels without motors, one dollar ($1.00).
(2) Vessels with motors not over 18 feet in length, three dollars ($3.00).
(3) Vessels with motors over 18 feet but not over 26 feet in length, fifty cents (50¢) per foot.
(4) Vessels with motors over 26 feet in length, seventy-five cents (75¢) per foot.
(5) Vessels engaged in menhaden fishing shall be taxed, based on tonnage, as prescribed in subsection (d).

Length is measured from end to end over the deck excluding sheer.

(d) Vessels engaging in menhaden fishing are subject to the following license and fee requirements:

(1) For the mother ship, one dollar and sixty cents ($1.60) per ton, gross tonnage, customhouse measurements.
(2) For each purse boat carrying a purse seine used in connection with a licensed mother ship, no license required.

(e) Unless otherwise indicated, all licenses in this Article expire on December 31 of each year and are subject to the full license fee regardless of when issued.

(f) No persons exempt from the oyster and clam licenses under the provisions of this section may take more than one bushel of oysters and clams in the aggregate on any one day. (1953, c. 1134; 1955, c. 888, ss. 1, 3; 1961, c. 1004; 1965, c. 957, s. 2; 1967, c. 444, ss. 1, 2; 1969, c. 1243; 1973, c. 1262, s. 28.)

Editor's Note. — The 1973 amendment substituted "Secretary" for "Commissioner" and "Marine Fisheries Commission" for "Board" in subsection (b).

For note on estuarine pollution, see 49 N.C.L. Rev. 921 (1971).

§ 113-153. Vessels fishing beyond territorial waters. — Persons aboard vessels not having their primary situs in North Carolina which are carrying a cargo of fish taken outside the waters of North Carolina may land and sell their catch in North Carolina either by complying with the licensing provisions of G.S. 113-152 with respect to the vessel in question or by complying, if eligible, with the provisions of G.S. 113-155. The Marine Fisheries Commission may by regulation modify the licensing procedure set out in G.S. 113-152 in order to devise an efficient and convenient procedure for licensing out-of-state vessels after landing in order to permit sale of cargo. Provided, that persons aboard vessels having a primary situs in a jurisdiction that would allow North Carolina vessels without restriction to land and sell their catch, taken outside such jurisdiction, may land and sell their catch in North Carolina without complying with this section. (1965, c. 957, s. 2; 1973, c. 1262, s. 28.)

Editor's Note. — The 1973 amendment substituted "Marine Fisheries Commission" for "Board" in the second sentence.

§ 113-154. Oyster and clam licenses. — (a) In addition to all other license requirements, every individual engaged in taking oysters or clams from the public or private grounds of North Carolina for commercial use by any means whatever must have first procured an individual oyster and clam license.

(b) It is unlawful for any individual to take oysters or clams for commercial use from the public or private grounds of North Carolina without having ready at hand for inspection a current and valid oyster and clam license issued to him personally and bearing his correct name and address. It is unlawful for any such individual taking or possessing freshly taken oysters or clams to refuse to exhibit his license upon the request of an officer authorized to enforce the fishing laws.

(c) Oyster and clam licenses are issued annually on a calendar-year basis upon payment of a fee of one dollar ($1.00) upon proof that the license applicant is a resident of North Carolina.

(d) In the event an individual possessing an oyster and clam license changes his name or address or receives one erroneous in this respect, he must within 15 days surrender the license for one bearing the correct name and address. An individual prosecuted for failure to possess a valid license is exonerated if he can show that the invalidity consisted solely of an incorrect name or address appearing in a license to which he was lawfully entitled and that the erroneous condition had not existed for longer than 15 days.

(e) It is unlawful for an individual issued an oyster and clam license to transfer or offer to transfer his license, either temporarily or permanently, to another. It is unlawful for an individual to secure or attempt to secure an oyster or clam license from a source not authorized by the Department. (1903, c. 516, s. 6; Rev., s. 2386; C. S., s. 1934; 1953, c. 1134; 1955, c. 888, s. 1; 1965, c. 957, s. 2; 1967, c. 444, s. 3.)

§ 113-155. Licenses to land and sell fish. — (a) Except as otherwise provided in this Article, it is unlawful for any person to sell fish, no matter where or how taken, to a fish dealer required to be licensed under this Article unless the fish were taken lawfully and unless:

(1) He has a current and valid license to land and sell fish issued to him personally and has received less than two hundred dollars ($200.00) on account of the sale of fish within the last 12 months; or

(2) The fish were taken in a commercial fishing operation meeting all licensing requirements, and he was a party to the operation; or
(3) The fish were taken by him, whether by sport or commercial methods, through the use of a vessel currently and validly licensed under G.S. 113-152; or
(4) The fish were taken by him in inland fishing waters in conformity with laws and regulations administered by the [Wildlife Resources] Commission and are of a type permitted to be sold by the [Wildlife Resources] Commission; or
(5) He is a licensed fish dealer.

(b) In the case of oysters or clams a license to land and sell is not required, but the person selling must satisfy the dealer that he took them or participated in the taking, that he then had a current and valid oyster and clam license issued to him personally, and that the oysters or clams were taken lawfully. In the event the person selling is a dealer, he must satisfy the purchasing dealer that the oysters or clams were acquired in conformity with law.

(c) Dealers purchasing fish must record such information relating to purchases as required by the Department of Natural and Economic Resources to implement the provisions of this section.

(d) Annual licenses to land and sell are issued on a calendar-year basis to individual residents and nonresidents upon payment of a fee of two dollars ($2.00).

(e) Any individual who receives in excess of two hundred dollars ($200.00) in cash or equivalent value within any 12-month period on account of the sale of fish is not entitled to a license to land and sell. If not covered by any exemption from license requirements, he must comply with licensing provisions applicable to vessels (or secure compliance by the owner of any vessel that may be involved) or comply with licensing provisions applicable to dealers, as may be appropriate. The Marine Fisheries Commission may implement this subsection by regulations clarifying which license is required in particular situations. In the event the taking of fish is done without the use of a vessel but the vessel license rather than the dealer license is the appropriate one, the Marine Fisheries Commission may by regulation determine which vessel license may be applicable on the basis of amount or value of fish taken and the average size of vessels ordinarily used to take such quantity or value of fish.

(f) It is unlawful for an individual issued a license to land and sell to transfer or offer to transfer his license, either temporarily or permanently, to another. It is unlawful for an individual to secure or attempt to secure an oyster and clam license from a source not authorized by the Department. (1965, c. 957, s. 2; 1973, c. 1262, s. 28.)

Editor's Note. — The 1973 amendment substituted "Department of Natural and Economic Resources" for "Board" in subsection (c) and "Marine Fisheries Commission" for "Board" in subsection (e).

§ 113-155.1. Commercial fishermen; identification. — Upon request by a licensed commercial fisherman, the Department of Natural and Economic Resources shall issue to him a suitable card which shall identify him as a commercial fisherman. Each identification card issued shall bear an expiration date, which date shall be the date on which the license issued to such fisherman expires, and such card may be renewed annually for so long as a valid commercial fishing license is in effect. The Secretary of Natural and Economic Resources shall prescribe the form and contents of such identification cards and shall promulgate the necessary rules and regulations relative to their issuance. (1973, c. 708, s. 2.)

§ 113-156. Licenses for fish dealers. — (a) Except as otherwise provided in this Article, every person who sells fish or has any connection whatever with fish that results in his enrichment is a fish dealer, provided that individual employees of fish dealers are not fish dealers merely by virtue of transacting the business of their employers.

(b) The Marine Fisheries Commission may make reasonable regulations to implement this section by clarifying the status of particular classes of persons as regards fish dealerships. Persons all of whose dealings with a category of fish fall under one or more of the following headings are not fish dealers as respects that category:

(1) Persons whose dealings in fish are primarily educational, scientific, or official. Scientific, educational, or official agencies may sell fish harvested or processed in connection with research or demonstration projects without being deemed dealers, but such sales are subject to such reasonable regulations as the Marine Fisheries Commission may make governing such sales.

(2) Individuals selling legally acquired fish other than oysters and clams to individuals other than dealers on a casual, noncommercial basis, provided that such sales do not net in excess of five hundred dollars ($500.00) in cash or equivalent value in any 12-month period. Any public offer to sell, or peddling of fish, is deemed commercial.

(3) Fishermen who sell their catch exclusively to licensed dealers in accordance with G.S. 113-155.

(c) Every fish dealer is subject to the licensing requirements of this section unless all fish handled within any particular licensing category meet one or more of the following requirements:

(1) The fish are shipped to him by a dealer from without the State.

(2) The fish are nongame fish taken in inland fishing waters.

(3) The fish are of a kind the sale of which is regulated exclusively by the [Wildlife Resources] Commission.

(4) The fish are purchased from a licensed dealer.

In the event the seller is a licensed fish dealer, he must satisfy any purchasing fish dealer, whether licensed or unlicensed, that the fish were acquired in conformity with law. It is unlawful for a fish dealer to purchase or sell or in any manner deal in fish except in conformity with the provisions of this section.

(d) Every fish dealer subject to the licensing provisions of this section must secure a separate license or set of licenses for each established location. Where a dealer does not have an established location for transacting the fisheries business within the State, the license application must be denied unless the applicant satisfies the Secretary that his residence, or some other office or address, within the State, is a suitable substitute for an established location and that records kept in connection with licensing, sale, and tax requirements will be available for inspection when necessary. Fish dealers' licenses are issued on a calendar-year basis upon payment of a fee as set forth herein upon proof, satisfactory to the Secretary, that the license applicant is a resident of North Carolina.

(e) Every fish dealer subject to licensing requirements must secure an annual license at each established location for each of the following activities transacted there, upon payment of the fee set out:

(1) Dealing in shellfish:

a. Shucker-packer (including sale of shell stock), twenty-five dollars ($25.00).

b. Shell stock shipper, ten dollars ($10.00).

(2) Dealing in hard and soft crabs:

a. Crab processor (including dealing in unprocessed crabs), ten dollars ($10.00).

b. Unprocessed crab dealer, five dollars ($5.00).

(3) Dealing in shrimp, ten dollars ($10.00).

(4) Dealing in finfish, ten dollars ($10.00).

(5) Operating menhaden processing plant, one hundred dollars ($100.00).

(6) Operating any other fish-dehydrating or oil-extracting plant, fifty dollars ($50.00).

Any person subject to fish-dealer licensing requirements who deals in fish not included in the above categories must secure a finfish dealer license. The Department of Natural and Economic Resources may make reasonable regulations implementing and clarifying the dealer categories of this subsection. (1903, c. 516, s. 9; Rev., s. 2395; 1915, c. 136, s. 1; C. S., s. 1935; 1953, c. 1134; 1965, c. 957, s. 2; 1969, c. 1244; 1973, c. 1262, s. 28.)

Editor's Note. — The 1973 amendment substituted "Marine Fisheries Commission" for "Board" in subsection (b), "Secretary" for "Commissioner" in subsection (d) and "Department of Natural and Economic Resources" for "Board" in subsection (e).

For note on estuarine pollution, see 49 N.C.L. Rev. 921 (1971).

§ 113-157. Taxes on seafood. — (a) Taxes are due and payable to the Department from fish dealers required to be licensed upon delivery to them of any seafood listed in this section taken within the State, whether from public or private grounds, unless accompanied by evidence that the tax levied by this section has already been assessed. The Marine Fisheries Commission may make reasonable regulations governing the assessment of the seafood tax and the Department may make reasonable regulations governing the administration and collection of said tax.

(b) In the event the fish dealer required to be licensed is also the fisherman taking the taxable seafood, the Marine Fisheries Commission may make reasonable regulations fixing the point at which the seafood tax becomes due and payable.

(c) In the event that the Department of Natural and Economic Resources authorizes a self-assessment method of collecting all or any part of the seafood tax, upon forms furnished to dealers by the Department, all taxes assessed are payable at all times on demand of any inspector or other authorized agent of the Department. If the Secretary becomes satisfied that any dealer granted the privilege of self-assessment has substantially obstructed the efficient and equitable administration of the provisions of this Article, either willfully or through inexcusable neglect, the Secretary may order the dealer's self-assessment privilege terminated. Termination may not exceed 10 days upon the first occasion. Upon the second occasion, the period of termination may not exceed 30 days. Upon the third or any subsequent occasion, the Secretary may terminate the self-assessment privilege indefinitely subject to reinstatement in his discretion. If the Secretary determines that termination of the privilege is likely to aggravate rather than reduce obstruction, he should employ other methods designed to secure compliance with laws, regulations, and reasonable requests of agents of the Department designed to produce equitable and efficient administration and enforcement of the provisions of this Article.

(d) The following taxes are applicable to the seafood named below:

(1) Oysters, eight cents (8¢) per bushel.

(2) Clams, six cents (6¢) per bushel.

(3) Scallops, five cents (5¢) per gallon.

(4) Soft crabs, two cents (2¢) per dozen.

(5) Hard crabs, ten cents (10¢) per one hundred pounds.

(6) Shrimp, green, heads off, fifteen cents (15¢) per one hundred pounds.

(7) Shrimp, green, heads on, ten cents (10¢) per one hundred pounds.

(e) In the event the Department of Natural and Economic Resources authorizes a self-assessment method of collecting all or any part of the seafood tax, all records and accounts required to be kept by the Department must be kept in a safe place and reasonable efforts must be made to preserve them from loss or destruction. If it becomes impossible to determine the amount of tax assessed for any period owing to loss or destruction of records or accounts, failure to make proper entries, or other fault of the dealer, an agent of the Department must reconstruct the approximate tax payable based upon previous sales in similar periods, the general condition of the market for the time in question, and other relevant information. The tax to be assessed for such period includes a one hundred percent (100%) penalty and is double the reconstructed figure. It is unlawful for any fish dealer to fail to remit upon demand of an authorized agent of the Department all taxes and penalties due. If any dispute arises as to the accuracy of the reconstructed figure, the dealer must bear the burden of showing it to be inaccurate. The dealer may appeal the reconstructed amount to the Secretary and, if dissatisfied, to the Marine Fisheries Commission. The decision of the Marine Fisheries Commission is final. In the event of appeal, the dealer must pay the reconstructed tax plus penalty under protest. (1947, c. 1000, s. 2; 1953, c. 175, s. 2; c. 1134; c. 1153, ss. 1, 2; 1965, c. 957, s. 2; 1969, c. 1275; 1973, c. 1262, s. 28.)

Editor's Note. — The 1973 amendment rewrote the second sentence of subsection (a), substituted "Marine Fisheries Commission" for "Board" in subsection (b), substituted "Department of Natural and Economic Resources" for "Board" in the first sentence of subsection (c), substituted "Secretary" for "Commissioner" in four places in subsection (c) and near the end of subsection (e), substituted "Department of Natural and Economic Resources" for "Board" in the first sentence of subsection (e) and substituted "Marine Fisheries Commission" for "Board" in the sixth and seventh sentences of subsection (e).

For note on estuarine pollution, see 49 N.C.L. Rev. 921 (1971).

§ 113-158. Transplanting or holding seafood; when seafood taxes due; permits to transplant oysters or clams. — (a) Where a fish dealer acquires taxable live seafood and transfers it to private beds, holding ponds, fish boxes or traps, or otherwise in the waters of this State with the purpose of harvesting the seafood at a subsequent time, the tax becomes due and payable at the time of harvest. The Department of Natural and Economic Resources may regulate such operations and require that such notice be given inspectors and that such records be kept as will minimize the risk of illicit traffic in taxable seafood under the cover of these operations. If as to any particular type of operation, regulation and inspection is made more efficient and equitable through the assessment of the tax at an earlier stage than that prescribed above, the Department of Natural and Economic Resources may by regulation declare the tax due and payable at the earlier stage.

(b) The Marine Fisheries Commission may require that special permits be secured in advance by all persons, whether dealers or otherwise, prior to transplanting oysters or clams. (1965, c. 957, s. 2; 1973, c. 1262, s. 28.)

Editor's Note. — The 1973 amendment substituted "Department of Natural and Economic Resources" for "Board" in subsection (a) and "Marine Fisheries Commission" for "Board" in subsection (b).

§ 113-159: Repealed by Session Laws 1973, c. 975.

§ 113-160. Exportation and importation of fish and equipment. — The Marine Fisheries Commission may make reasonable regulations governing the importation and exportation of fish, and equipment that may be used in taking

or processing fish, as necessary to enhance the conservation of marine and estuarine resources of North Carolina. Such regulations may regulate, license, prohibit, or restrict importation into the State and exportation from the State of any and all species of fish which are native to coastal fishing waters or which may thrive if introduced into such waters. (1947, c. 1000, s. 2; 1953, c. 175, s. 2; c. 1153, ss. 1, 2; 1965, c. 957, s. 2; 1973, c. 1262, s. 28.)

Editor's Note. — The 1973 amendment substituted "Marine Fisheries Commission" for "Board."

§ 113-161. Reciprocal agreements. — The Secretary may make reciprocal agreements with other jurisdictions to authorize persons licensed in such other jurisdictions to exercise licensed privileges within this State upon such terms and conditions that may be agreed on as mutually beneficial, provided that such jurisdictions accord privileges of similar nature or value to holders of North Carolina licenses. (1965, c. 957, s. 2; 1973, c. 1262, ss. 28, 86.)

Editor's Note. — The 1973 amendment substituted "The Secretary" for "Upon recommendation of the Commissioner, the Director" at the beginning of the section.

§ 113-162. Fraud or deception as to licenses, taxes or records. — It is unlawful to falsify, or to practice any fraud or deception designed to evade the provisions of this Article or of regulations made under the authority of this Article in connection with:

(1) Any licenses authorized in this Article;
(2) Any tax receipts or other evidence that the tax has been assessed on seafood or that the seafood is not subject to tax; or
(3) Any records required to be kept under the provisions of this Article or of regulations made under the authority of this Article. (1965, c. 957, s. 2.)

§ 113-163. Record-keeping requirements. — (a) The Department may require all licensees under this Article to keep and to exhibit upon the request of an authorized agent of the Department such records and accounts as may be necessary to the equitable and efficient administration and enforcement of this Article. In addition, licensees may be required to keep additional information of a statistical nature or relating to location of catch as may be needed to determine conservation policy. Records and accounts required to be kept must be preserved for inspection for not less than three years.

(b) It is unlawful for any licensee to refuse or to neglect without justifiable excuse to keep such records and accounts as may be reasonably required. The Department may distribute forms to licensees to aid in securing compliance with its requirements, or it may inform licensees of requirements in other effective ways such as distributing memoranda and sending agents of the Department to consult with licensees who have been remiss. Detailed forms or descriptions of records, accounts, collection and inspection procedures, and the like which reasonably implement the objectives of this Article need not be embodied in regulations of the Marine Fisheries Commission in order to be validly required. (1953, c. 1134; 1961, c. 1189, s. 3; 1965, c. 957, s. 2; 1973, c. 1262, s. 28.)

Editor's Note. — The 1973 amendment substituted "Marine Fisheries Commission" for "Board" in the last sentence of subsection (b).

§ 113-164. Regulations as to possession, transportation and disposition of seafood. — The Marine Fisheries Commission may make reasonable regulations governing possession, transportation, and disposition of the seafood listed in G.S. 113-157(d) by all persons, including those not subject to fish-dealer licensing and tax requirements, in order that inspectors may adequately distinguish the taxable seafood from that not subject to tax and equitably and efficiently enforce the provisions of this Article. Such regulations may include requirements as to giving notice, filing declarations, securing permits, marking packages, and the like. (1965, c. 957, s. 2; 1973, c. 1262, s. 28.)

Editor's Note. — The 1973 amendment substituted "Marine Fisheries Commission" for "Board" near the beginning of the section.

§ 113-165. Violations with respect to taxable seafood and coastal fisheries products. — It is unlawful to take, possess, transport, process, sell, buy, offer or attempt to buy, or in any way deal in either seafood made taxable in this Article or coastal fisheries products without conforming with the provisions of this Article or of regulations made under the authority of this Article. (1961, c. 1189, s. 2; 1965, c. 957, s. 2.)

§ 113-166. Suspension, revocation and reissuance of licenses. — (a) Upon receipt of reliable notice that a person licensed under this Article has had imposed against him a conviction of a criminal offense within the jurisdiction of the Department under the provisions of this Subchapter or of regulations of the Marine Fisheries Commission adopted under the authority of this Subchapter, the Secretary must suspend or revoke all licenses held by such person in accordance with the terms of this section. Reliable notice includes information furnished the Secretary in prosecution or other reports from inspectors. As used in this section, a conviction includes a plea of guilty or nolo contendere, any other termination of a criminal prosecution unfavorably to the defendant after jeopardy has attached, or any substitute for criminal prosecution whereby the defendant expressly or impliedly confesses his guilt. In particular, procedures whereby bond forfeitures are accepted in lieu of proceeding to trial and cases indefinitely continued upon arrest of judgment or prayer for judgment continued are deemed convictions. The Secretary may act to suspend or revoke licenses upon the basis of any conviction in which:

(1) No notice of appeal has been given; or

(2) The time for appeal has expired without an appeal having been perfected; or

(3) The conviction is sustained on appeal. Where there is a new trial, finality of any subsequent conviction will be determined in the manner set out above.

(b) The Secretary must initiate an administrative procedure designed to give him systematic notice of all convictions of criminal offenses by licensees covered by subsection (a) above and keep a file of all such convictions reported to him. Upon receipt of notice of such conviction, the Secretary must determine whether it is a first, a second, a third, or a fourth or subsequent conviction of some offense covered by subsection (a). In the case of second convictions, the Secretary must suspend all licenses issued to the licensee for a period of 10 days. In the case of third convictions, the Secretary must suspend all licenses issued to the licensee for a period of 30 days. In the case of fourth or subsequent convictions, the Secretary must revoke all licenses issued to the licensee. Where several convictions result from a single transaction or occurrence, they are to be treated as a single conviction so far as supension or revocation of the licenses of any licensee is concerned. Anyone convicted of taking or of knowingly

possessing, transporting, buying, selling, or offering to buy or sell oysters or clams from areas closed because of suspected pollution will be deemed by the Secretary to have been convicted of two separate offenses on different occasions for license suspension or revocation purposes.

(c) Where a license has been suspended or revoked, the former licensee is not eligible to apply for reissuance of license or for any additional license authorized in this Article during the suspension or revocation period. Licenses must be returned to the licensee by the Secretary or his agents at the end of a period of suspension. Where there has been a revocation, application for reissuance of license or for an additional license may not be made until six months following the date of revocation. In such case of revocation, the eligible former licensee must satisfy the Secretary that he will strive in the future to conduct the operations for which the license is sought in accord with all applicable laws and regulations. Upon the application of an eligible former licensee after revocation, the Secretary in his discretion may issue one license sought but not another, as he deems it necessary to prevent the hazard of recurring violations of the law.

(d) Upon receiving reliable information of a licensee's conviction of a second or subsequent criminal offense covered by subsection (a), the Secretary must promptly cause the licensee to be personally served with written notice of suspension or revocation, as the case may be. The written notice may be served upon any responsible individual affiliated with the corporation, partnership, or association where the licensee is not an individual. The notice of suspension or revocation may be served by an inspector or other agent of the Department, must state the ground upon which it is based, and takes effect immediately upon personal service. The agent of the Secretary making such service must then or subsequently, as may be feasible under the circumstances, collect all license certificates and plates and other forms or records relating to the license as directed by the Secretary. It is unlawful for any licensee willfully to evade the personal service prescribed in this subsection.

(e) Licensees served with notices of suspension or revocation may appeal in writing to the Secretary on the question of whether or not they were in fact subjected to final convictions in the proceedings forming a basis for their license suspension or revocation. The license remains revoked or suspended, after personal service, pending appeal to the Secretary. The Secretary must hear the evidence of the licensee as promptly as may be feasible and either cancel or continue in effect the suspension or revocation order. The decision of the Secretary as to imposition of suspension or revocation is the final administrative determination.

(f) In the event the Secretary refuses to reissue the license of or issue an additional license to an eligible former licensee after revocation, the former licensee may appeal the decision of the Secretary to the Marine Fisheries Commission. In the event the decision not to issue the license is upheld, the former licensee must wait an additional six months before again applying to the Secretary for issuance or reissuance of any license.

(g) The Marine Fisheries Commission may by regulation provide for disclosure of the identity of any individual or individuals in responsible positions of control respecting operations of any licensee that is not an individual. For the purposes of this section, individuals in such responsible positions of control are deemed to be individual licensees and subject to suspension and revocation requirements in regard to any applications for license they may make — either as individual or as persons in responsible positions of control in any corporation, partnership, or association. In the case of individual licensees, the individual applying for a license or licensed under this Article must be the real party in interest.

(h) In determining whether a conviction is a second or subsequent offense under the provisions of this section, the Secretary may not consider convictions for:

(1) Offenses which occurred prior to the effective date of this Article; or

(2) Offenses which occurred more than three years prior to the time of the latest offense the conviction for which is in issue as a subsequent conviction. (1953, c. 1134; 1961, c. 1189, ss. 4, 9; 1965, c. 957, s. 2; 1973, c. 1262, s. 28.)

Editor's Note. — The 1973 amendment substituted "Marine Fisheries Commission" for "Board" in subsections (a), (f) and (g) and substituted "Secretary" for "Commissioner" throughout the section. The amendment also deleted "the Director and, if dissatisfied, to" preceding "the Marine Fisheries Commission" near the end of the first sentence of subsection (f).

§§ 113-167 to 113-180: Reserved for future codification purposes.

Article 15.

Regulation of Coastal Fisheries.

§ 113-181. Duties and powers of Department. — (a) It is the duty of the Department to administer and enforce the provisions of this Subchapter pertaining to the conservation of marine and estuarine resources. In execution of this duty, the Department may collect such statistics, market information, and research data as is necessary or useful to the promotion of sports and commercial fisheries in North Carolina and the conservation of marine and estuarine resources generally; conduct or contract for research programs or research and development programs applicable to resources generally and to methods of cultivating, harvesting, marketing, or processing fish as may be beneficial in achieving the objectives of this Subchapter; enter into reciprocal agreements with other jurisdictions with regard to the conservation of marine and estuarine resources; and regulate placement of nets and other sports or commercial fishing apparatus in coastal fishing waters with regard to navigational and recreational safety as well as from a conservation standpoint.

(b) The Department is directed to make every reasonable effort to carry out the duties imposed in this Subchapter. The Marine Fisheries Commission may make regulations as necessary to implement the work of the Department in carrying out such duties. (1915, c. 84, s. 5; 1917, c. 290, s. 10; C. S., s. 1883; 1953, c. 1086; 1965, c. 957, s. 2; 1973, c. 1262, s. 28.)

Editor's Note. — The 1973 amendment substituted "Marine Fisheries Commission" for "Board" in subsection (b).

§ 113-182. Regulation of fishing and fisheries. — (a) The Marine Fisheries Commission is authorized to authorize, license, regulate, prohibit, prescribe, or restrict all forms of marine and estuarine resources in coastal fishing waters with respect to:

(1) Time, place, character, or dimensions of any methods or equipment that may be employed in taking fish;

(2) Seasons for taking fish;

(3) Size limits on and maximun quantities of fish that may be taken, possessed, bailed to another, transported, bought, sold, or given away.

(b) The Marine Fisheries Commission is authorized to authorize, regulate, prohibit, prescribe, or restrict and the Department is authorized to license:

(1) The opening and closing of coastal fishing waters, except as to inland game fish, whether entirely or only as to the taking of particular classes of fish, use of particular equipment, or as to other activities within the jurisdiction of the Department; and

(2) The possession, cultivation, transportation, importation, exportation, sale, purchase, acquisition, and disposition of all marine and estuarine resources and all related equipment, implements, vessels, and conveyances as necessary to implement the work of the Department in carrying out its duties. (1915, c. 84, s. 21; 1917, c. 290, s. 7; C. S., s. 1878; 1925, c. 168, s. 2; 1935, c. 35; 1945, c. 776; 1953, cc. 774, 1251; 1961, c. 1189, s. 1; 1963, c. 1097, s. 1; 1965, c. 957, s. 2; 1973, c. 1262, s. 28.)

Editor's Note. — The 1973 amendment substituted "Marine Fisheries Commission" for "Board" in the introductory paragraph of subsection (a) and rewrote the introductory paragraph of subsection (b).

§ 113-183. Unlawful possession, transportation and sale of fish. — (a) It is unlawful to possess, transport, offer to transport, sell, offer to sell, receive, buy, or attempt to buy any fish regulated by the Department with knowledge or reason to believe that such fish are illicit.

(b) Fish are illicit when taken, possessed, or dealt with unlawfully, or when there has occurred at any time with respect to such fish a substantial failure of compliance with the applicable provisions of this Subchapter or of regulations made under the authority of this Subchapter. (1961, c. 1189, s. 2; 1965, c. 957, s. 2.)

§ 113-184. Possession and transportation of prohibited oyster equipment. — (a) It is unlawful to carry aboard any vessel subject to licensing requirements under Article 14 under way or at anchor in coastal fishing waters during the regular closed oyster season any scoops, scrapes, dredges, or winders such as are usually or can be used for taking oysters.

(b) If any vessel has recently been under way or at anchor in coastal fishing waters engaged in activity similar in manner to that in which oysters are taken with scoops, scrapes, or dredges and at a time or place in which the taking of oysters is prohibited, the presence on board of the vessel of wet oysters or scoops, scrapes, dredges, lines, or deck wet, indicating the taking of oysters, constitutes prima facie evidence that the vessel was engaged in taking oysters unlawfully with scoops, scrapes, or dredges at the time or place prohibited.

(c) It is unlawful to carry aboard any vessel subject to licensing requirements under Article 14 under way or at anchor in coastal fishing waters any dredge weighing more than 100 pounds. (1903, c. 516, ss. 13-15, 28; Rev., ss. 2385, 2397; C. S., s. 1926; 1963, c. 452; 1965, c. 957, s. 2.)

§ 113-185. Fishing near ocean piers; trash or scrap fishing. — (a) It is unlawful to fish in the ocean within 750 feet of an ocean pier except:

(1) From the pier or

(2) By means of surf casting.

This prohibition shall be effective whether or not the pier owner places in the area of his pier and at his own expense buoys located in accordance with directives of the Secretary to indicate clearly to fishermen in vessels and on the beach the requisite distance of 750 feet from the pier.

(b) It is unlawful to engage in any fishing operations known as trash fishing or scrap fishing. "Trash fishing" or "scrap fishing" consists of intentionally taking the young of edible fish before they are of sufficient size to be of value as individual food fish:

(1) For commercial disposition as bait; or

(2) For sale to any dehydrating or nonfood processing plant; or
(3) For sale or commercial disposition in any manner other than for human consumption.

The Marine Fisheries Commission may by regulation authorize the disposition of the young of edible fish taken incidentally and unavoidably in connection with legitimate commercial fishing operations, provided that the quantity of such fish that may be disposed of is sufficiently limited, or the taking and disposition is otherwise so regulated, as to discourage any practice of trash or scrap fishing for its own sake. (1965, c. 957, s. 2; 1973, c. 1262, ss. 28, 86.)

Editor's Note. — The 1973 amendment substituted "Secretary" for "Commissioner" in subsection (a) and "Marine Fisheries Commission" for "Board" in subsection (b).

§ 113-186. Measures for fish scrap and oil. — All persons buying or selling menhaden for the purpose of manufacturing fish scrap and oil within the State must buy or sell according to the measure prescribed in this section: 22,000 cubic inches for every 1,000 fish. Each day of failure to use the prescribed measure constitutes a separate offense. (1911, c. 101; C. S., s. 1963; 1965, c. 957, s. 2.)

§ 113-187. Penalties for violations of Article and regulations. — (a) It is unlawful for any person to participate in any commercial fishing operation conducted in violation of any provision of this Article and its implementing regulations or in any operation in connection with which any vessel is used in violation of any provision of this Article and its implementing regulations.

(b) Any owner of a vessel who knowingly permits it to be used in violation of any provision of this Article and its implementing regulations is guilty of a misdemeanor punishable in the discretion of the court.

(c) Any person in charge of a commercial fishing operation conducted in violation of any provision of this Article and its implementing regulations or in charge of any vessel used in violation of any provision of this Article and its implementing regulations is guilty of a misdemeanor punishable in the discretion of the court.

(d) Any person in charge of a commercial fishing operation conducted in violation of the following provisions of this Subchapter or the following rules and regulations of the Department of Natural and Economic Resources; and any person in charge of any vessel used in violation of the following provisions of the Subchapter or the following rules and regulations, shall be guilty of a misdemeanor punishable by a fine of not less than fifty dollars ($50.00) nor more than two hundred fifty dollars ($250.00) for the first offense and not less than one hundred dollars ($100.00) nor more than five hundred dollars ($500.00) for any offense thereafter, or imprisonment for not more than 30 days, or both. The violations of the statute of the rules and regulations for which this penalty is mandatory are:

(1) Taking or attempting to take, possess, sell, or offer for sale any oysters or clams taken from areas closed by statute, regulation, or proclamation because of suspected pollution.
(2) Taking or attempting to take or have in possession aboard a vessel, shrimp taken by the use of a trawl net between January 1 and the date upon which the shrimping season shall be opened by the Secretary.
(3) Using a trawl net in any coastal fishing waters closed by proclamation or regulation for the protection of the shrimp population.
(4) Violating the provisions of a special permit issued by the Department. (1965, c. 957, s. 2; 1973, c. 1102; c. 1262, ss. 28, 86.)

Editor's Note. — The first 1973 amendment added subsection (d). The second 1973 amendment substituted "Department of Natural and Economic Re-

sources" for "Board" near the beginning of the first sentence of subsection (d) and "Secretary" for "Director" at the end of subdivision (2) of subsection (d).

§ 113-188. Additional regulations authorized. — The setting out of particular offenses or requirements with regard to specific species of fish or with regard to certain types of equipment does not affect the authority of the Marine Fisheries Commission to make similar additional regulations not in conflict with the provisions of this Article under authority granted in this Chapter. (1965, c. 957, s. 2; 1973, c. 1262, s. 28.)

Editor's Note. — The 1973 amendment substituted "Marine Fisheries Commission" for "Board."

§ 113-189. Protection of sea turtles and porpoises. — (a) It shall be unlawful willfully to take, disturb or destroy any sea turtles including, but not limited to, green, hawksbill, loggerhead, and leatherback turtles, or their nests or eggs at any time during the months of May, June, July, August and September of each year.

(b) It shall be unlawful willfully to harm or destroy porpoises. (1967, cc. 198, 1225.)

§§ 113-190 to 113-200: Reserved for future codification purposes.

ARTICLE 16.

Cultivation of Oysters and Clams.

§ 113-201. Authority of Marine Fisheries Commission. — The Marine Fisheries Commission is empowered to make regulations and take all steps necessary to develop and improve the cultivation, harvesting, and marketing of oysters and clams in North Carolina both from public grounds and private beds. (1921, c. 132, s. 1; C. S., s. 1959(a); 1965, c. 957, s. 2; 1973, c. 1262, s. 28.)

Editor's Note. — The 1973 amendment substituted "Marine Fisheries Commission" for "Board."

§ 113-202. New leases and renewal leases of oyster and clam bottoms; termination of leases issued prior to January 1, 1966. — (a) In order to encourage oyster and clam culture in North Carolina, the Marine Fisheries Commission may lease to residents any of the public bottoms underlying coastal fishing waters which do not contain a natural oyster or clam bed, in accordance with the provisions of this Article. A natural oyster or clam bed is an area of public bottom where oysters or clams are to be found growing in sufficient quantities to be valuable to the public.

(b) The area leased may not be less than one acre nor more than 50 acres, except that in the open waters of Pamlico Sound leases may not be less than five acres nor more than 200 acres. For the purposes of this section, the open waters of Pamlico Sound are those waters more than two miles from the shoreline.

(c) No person may lease more than a total of 50 acres of public bottom outside the open waters of Pamlico Sound. In no event may any person lease more than a total of 200 acres within the State.

(d) Any person desiring to apply for a lease must make written application to the Secretary on forms prepared by the Department containing such information as deemed necessary to determine the desirability of granting or not granting the lease requested. Except in the case of renewal leases, the application must be accompanied by a survey, made at the expense of the applicant, showing the area proposed to be leased.

The survey must conform to standards prescribed by the Secretary concerning accuracy of survey and the amount of detail that must be shown. If on the basis of the application information and survey the Secretary deems that granting the lease would benefit the oyster and clam culture of North Carolina, the Secretary, in the case of initial lease applications, must order an investigation of the bottom proposed to be leased. The investigation is to be made by the Secretary or his authorized agent and by a qualified assistant appointed by the board of county commissioners of the county in which the bottom, or tne greater portion of the bottom, is located to determine whether there is a natural oyster or clam bed within the bounds of the proposed lease. In the event a natural oyster or clam bed is encountered, the Secretary in his discretion may either recommend that the lessee's failure to make diligent effort to produce oysters and clams in the Secretary authorizes amendment of the application, the applicant must furnish a new survey meeting requisite standards showing the area proposed to be leased under the amended application. At the time of making application for an initial lease, the applicant must pay a filing fee of twenty-five dollars ($25.00).

(e) The area of bottom applied for in the case of an initial lease or amended initial lease must be as compact as possible, taking into consideration the shape of the body of water, the consistency of the bottom, and the desirability of separating the boundaries of a leasehold by a sufficient distance from any known natural oyster or clam bed to prevent the likelihood of disputes arising between the leaseholder and members of the public taking oysters or clams from the natural bed.

(f) Upon determination by the Secretary that the results of the investigation, if required, are satisfactory and that the application for lease and the accompanying survey are in order, and that the proper filing fee has been tendered, the Secretary must within a reasonable time notify the applicant whether he recommends approval, disapproval, or modification of the lease application. In the event the Secretary recommends approval or a modification to which the applicant agrees, the Secretary must publish at least two notices of intention to lease in a newspaper of general circulation in the county or counties in which the proposed leasehold lies. The first publication must precede by more than 30 days the meeting of the Marine Fisheries Commission at which the granting of the lease or renewal of lease is to be made; the second publication must follow the first by seven to 11 days. The notice of intention to lease must contain a sufficient description of the area of the proposed leasehold that its boundaries may be established with reasonable ease and certainty and must also contain the date of the meeting at which the Marine Fisheries Commission is slated to act upon the application for lease or renewal of lease.

(g) Protests to the granting of the proposed lease may be filed with the Secretary in writing under oath prior to the granting of the lease by the Marine Fisheries Commission. Protests cannot be considered unless accompanied by a filing fee of twenty-five dollars ($25.00). The Secretary must evaluate the sufficiency of the grounds stated in the protest and make such investigation as he deems necessary. In the interest of making a just evaluation, he may recommend that the Marine Fisheries Commission postpone consideration of the lease to a subsequent meeting. The Secretary as a result of his evaluation may recommend denial or amendment of the lease or the granting of it in its original form, in the best interests of the oyster and clam culture of North Carolina,

except that no lease may be granted which embraces a known or suspected natural oyster or clam bed. The lease applicant must furnish any additional or amended survey required in the event the protest results in a modification of the lease. In the event the protest does not prevail and the lease is granted in its original form, the twenty-five dollars ($25.00) deposited with the protest must be forfeited to the use of the Department. In the event the protest is successful in causing a denial or modification of the lease, the twenty-five dollar ($25.00) deposit must be returned to the person protesting.

(h) The Marine Fisheries Commission in its discretion may lease or decline to lease public bottoms for oyster or clam culture in accordance with its duty to conserve the marine and estuarine resources of the State. The Secretary must present all lease applications to the Marine Fisheries Commission as to which he has published a notice of intention to lease more than 30 days prior to the meeting of the Marine Fisheries Commission. In the event there was a protest that did not prevail before the Secretary as to any lease recommended by him, the Secretary must notify the Marine Fisheries Commission of such protest. Persons whose lease applications are not recommended or are recommended in amended form by the Secretary may appeal to the Marine Fisheries Commission. In the event the Marine Fisheries Commission sustains the appeal in whole or in part, it may order the Secretary to take the steps necessary to comply with its decisions and effect a reprocessing of the lease application prior to the next Marine Fisheries Commission meeting or such other time as it may direct.

(i) After a lease is granted by the Marine Fisheries Commission and the Secretary is satisfied that the survey submitted meets the criteria and that all fees and rent due in advance have been paid, the Secretary must execute the lease on forms approved by the Attorney General. The leaseholder must erect markers complying with regulations of the Marine Fisheries Commission in order to define the bounds of the leased area. The Secretary shall have authority, in his discretion, with the approval of the lessee, to amend an existing lease by reducing the area under lease or by combining existing contiguous leases.

(j) Initial leases begin upon the issuance of the lease by the Secretary and expire at noon on the first day of April following the tenth anniversary of the granting of the lease. Renewal leases are issued for a period of 10 years effective from the time of expiration of the previous lease. The rental for initial leases is one dollar ($1.00) per acre for all leases entered into before July 1, 1965, and for all other leases until noon on the first day of April following the first anniversary of the lease. Thereafter, for initial leases entered into after July 1, 1965, and from the beginning for renewals of leases entered into after said date, the rental is five dollars ($5.00) per acre per year. Rental must be paid annually in advance prior to the first day of April each year. Upon initial granting of a lease, the pro rata amount for the portion of the year left until the first day of April must be paid in advance at the rate of one dollar ($1.00) per acre per year; then, on or before the first day of April next, the lessee must pay the rental for the next full year.

(k) Except as restricted by this Subchapter, leaseholds granted under this section are to be treated as if they were real property and are subject to all laws relating to taxation, sale, devise, inheritance, gift, seizure and sale under execution or other legal process, and the like. Leases properly acknowledged and probated are eligible for recordation in the same manner as instruments conveying an estate in real property. Within 15 days after transfer of beneficial ownership of all or any portion of or interest in a leasehold to another, the new owner must notify the Secretary of such fact. Such transfer is not valid until notice is furnished the Secretary. In the event such transferee is a nonresident, the Secretary must initiate proceedings to terminate the lease.

(l) Upon receipt of notice by the Secretary of any of the following occurrences, he must commence action to terminate the leasehold:

(1) Failure to pay the annual rent in advance.
(2) Failure to file information required by the Secretary upon annual remittance of rental.
(3) Failure by new owner to report a transfer of beneficial ownership of all or any portion of or interest in the leasehold.
(4) Failure to mark the boundaries in the leasehold and to keep them marked as required in the regulations of the Marine Fisheries Commission.
(5) Failure to utilize the leasehold on a continuing basis for the commercial production of oysters or clams.
(6) Transfer of all or part of the beneficial ownership of a leasehold to a nonresident.
(7) Substantial breach of compliance with the provisions of this Article or of regulations of the Marine Fisheries Commission governing use of the leasehold.

The Marine Fisheries Commission is authorized to make regulations defining commercial production of oysters and clams, based upon the productive potential of particular areas climatic or biological conditions at particular areas or particular times, availability of seed oysters and clams, availability for purchase by lessees of shells or other material to which oyster spat may attach, and the like. Commercial production may be defined in terms of planting effort made as well as in terms of quantities of oysters and clams harvested. Provided, however, that if a lessee has made a diligent effort to effectively and efficiently manage his lease according to accepted standards and practices in such management, and because of reasons beyond his control, such as acts of God, such lessee has not and cannot meet the requirements set out by the Marine Fisheries Commission under the provisions of this paragraph of this subsection, his leasehold shall not be terminated under subdivision (5) of this subsection.

(m) After receipt of notice of any occurrence listed in subsection (l), the Secretary must mail the leaseholder a letter by registered or certified mail, return receipt requested, informing him of his intention to terminate and of the reason for the action. In the event the leaseholder takes steps within 30 days to remedy the situation upon which the notice of intention to terminate was based and the Secretary is satisfied that continuation of the lease is in the best interests of the oyster and clam culture of the State, the Secretary may discontinue termination procedures. Where there is no discontinuance of termination procedures, the leaseholder may appeal to the Marine Fisheries Commission. Where there is no appeal, or where an appeal does not prevail, the Secretary must send a final letter of termination to the leaseholder by registered or certified mail, return receipt requested. The final letter of termination may not be mailed sooner than 30 days after receipt by the leaseholder of the Secretary's notice of intention to terminate, as evidenced by the return receipt. The lease is terminated effective at midnight on the day the final notice of termination is received by the leaseholder, as evidenced by the return receipt. The final notice of termination may not be issued pending hearing of any appeal by the Marine Fisheries Commission.

(n) Upon final termination of any leasehold, the bottom in question is thrown open to the public for use in accordance with laws and regulations governing use of public grounds generally. Agents of the Secretary are required as soon as possible after termination of lease to remove all markers denominating the area of the leasehold as a private bottom.

(o) Every year between January 1 and February 15 the Secretary must mail to all leaseholders a notice of the annual rental due and include forms designed by him for determining the amount of shellfish or shells planted on the leasehold during the preceding calendar year, the amount of harvest gathered, and the names and addresses of those to whom the harvest was sold or delivered. Such forms may contain other pertinent questions relating to the utilization of the

leasehold in the best interests of the oyster and clam culture of the State, and must be executed and returned by the leaseholder with the payment of his rental. Any leaseholder or his agent executing such forms for him who knowingly makes a false statement on such forms is guilty of a misdemeanor punishable in the discretion of the court.

(p) All leases and renewal leases granted after the effective date of this Article are made subject to this Article and to reasonable amendment of governing statutes, regulations of the Marine Fisheries Commission, and requirements imposed by the Secretary or his agents in regulating the use of the leasehold or in processing applications of rentals. This includes such statutory increase in rentals as may be necessitated by changing conditions and refusal to renew lease after expiration, in the discretion of the Marine Fisheries Commission. No increase in rentals, however, may be given retroactive effect.

The General Assembly declares it to be contrary to public policy to the oyster and clam bottoms which were leased prior to January 1, 1966, and which are not being used to produce oysters and clams in commercial quantities to continue to be held by private individuals, thus depriving the public of a resource which belongs to all the people of the State. Therefore, when the Secretary determines, after due notice to the lessee, and after opportunity for the lessee to be heard, that oysters or clams are not being produced in commercial quantities, due to the lessee's failure to make diligent effort to produce oysters and clams in commercial quantities, the Secretary may decline to renew, at the end of the current term, any oyster or clam bottom lease which was executed prior to January 1, 1966. The lessee may appeal the denial of the Secretary to renew the lease to the Marine Fisheries Commission in which event the lessee shall be granted an opportunity to be heard, de novo, by the Marine Fisheries Commission and the burden of proof, by the greater weight of the evidence, shall be on the lessee. The Marine Fisheries Commission, by majority vote, may affirm or reverse the action of the Secretary. No appeal shall be allowed from the action of the Marine Fisheries Commission.

(q) If the Department of Human Resources closes any creek, stream, river, bay, or sound area to oystering or clamming by reason of pollution, the Secretary is authorized to refund the rental fee paid by any lessee who holds an oyster or clam lease from the State of North Carolina and whose private garden is closed by reason of the said pollution through no fault of the said lessee. Such refund shall be apportioned and only that portion equivalent to the fraction of year that the oyster garden was closed to oystering and clamming will be refunded. (1893, c. 287, s. 1; Rev., s. 2371; 1909, c. 871, ss. 1-9; 1919, c. 333, s. 6; C. S., ss. 1902-1911; Ex. Sess. 1921, c. 46, s. 1; 1933, c. 346; 1953, cc. 842, 1139; 1963, c. 1260, ss. 1-3; 1965, c. 957, s. 2; 1967, c. 24, s. 16; c. 88; c. 876, s. 1; 1971, c. 447; 1973, c. 476, s. 128; c. 1262, ss. 28, 86.)

Local Modification. — Brunswick: 1967, c. 876, s. 2.

Editor's Note. — The first 1973 amendment substituted "Department of Human Resources" for "State Board of Health" in subsection (q).

The second 1973 amendment substituted "Secretary" for "Commissioner of Commercial and Sports Fisheries" in subsection (q) and for "Commissioner" throughout the rest of the section, substituted "Marine Fisheries Commission" for "Board" throughout the section, and made other changes in conformity with the reorganization of the Department of Natural and Economic Resources by Session Laws 1973, c. 1262.

For note on estuarine pollution, see 49 N.C.L. Rev. 921 (1971).

Lease Constitutes Contract That May Not Be Abrogated by Subsequent Statute. — While there is no vested right in the provisions of a statute, where a person has leased the bottom of waters from the State for oyster beds pursuant to former law, the lease constitutes a contract between the lessee and the State, and the State may not by subsequent statute abrogate the terms of the contract, either as to duration and renewals or the amount of rent. Oglesby v. Adams, 268 N.C. 272, 150 S.E.2d 383 (1966).

§ 113-203. Transplanting of oysters and clams. — (a) It is unlawful to transplant oysters taken from public grounds to private beds except:

(1) When lawfully taken during open season and transported directly to a private bed in accordance with regulations of the Department of Natural and Economic Resources;

(2) When the transplanting is done by a dealer in accordance with the provisions of G.S. 113-158 and implementing regulations; or

(3) When the transplanting is done in accordance with the provisions of this section and implementing regulations.

(b) It is lawful to transplant to private beds oysters or clams taken from polluted waters with a permit from the Secretary setting out the waters from which the oysters or clams may be taken, the quantities which may be taken, the times during which the taking is permissible, and other reasonable restrictions imposed by the Secretary to aid him in his duty of regulating such transplanting operations. Any transplanting operation which does not substantially comply with the restrictions of the permit issued is unlawful.

(c) It is lawful to transplant to private beds oysters taken from public beds managed by the State for the production of seed oysters in accordance with the implementing regulations of the Marine Fisheries Commission. Persons taking such seed oysters may, in the discretion of the Marine Fisheries Commission, be required to pay to the Department for oysters taken an amount to reimburse the Department in full or in part for the costs of seed-oyster management operations.

(d) It is lawful to transplant to private beds in North Carolina oysters taken from public beds designated by the Marine Fisheries Commission as natural seed oyster areas. Such areas shall be designated as natural seed oyster areas in the following manner:

A petition shall be filed with the Secretary by the board of county commissioners of the county in which such area is located requesting the designation of and describing the area proposed as a natural seed oyster area. Upon the receipt of the petition, the Secretary shall, within six weeks of the receipt by him of such petition, cause an investigation of the area proposed to be designated as a natural seed oyster area. Such investigation shall be made by qualified biologists of the Department of Natural and Economic Resources. The Secretary shall then make a recommendation to the Marine Fisheries Commission as to whether the area described in the petition should be designated as a natural seed oyster area and such area shall be so designated by the Marine Fisheries Commission only after the Secretary so recommends as being in the best interests of the State.

The Secretary shall issue permits to all qualified individuals who are residents of North Carolina without regard to county of residence to transplant seed oysters from said designated natural seed oyster areas, setting out the quantity which may be taken, the times which the taking is permissible and other reasonable restrictions imposed to aid him in his duty of regulating such transplanting operations. Any transplanting operation which does not substantially comply with the restrictions of the permit issued is unlawful.

(e) The Marine Fisheries Commission may implement the provisions of this section by regulations governing sale, possession, transportation, storage, handling, planting, and harvesting of oysters and clams and setting out any system of marking oysters and clams or of permits or receipts relating to them generally, from both public and private beds, as necessary to regulate the lawful transplanting of seed oysters and oysters or clams taken from or placed on public or private beds. (1921, c. 132, s. 2; C. S., s. 1959(b); 1961, c. 1189, s. 1; 1965, c. 957, s. 2; 1967, c. 878; 1973, c. 1262, s. 28.)

Editor's Note. — The 1973 amendment substituted "Department of Natural and Economic Resources" for "Board" in subdivision (1) of subsection (a), substituted "Secretary" for "Commissioner" in subsections (b) and (d) and substituted "Marine Fisheries Commission" for "Board" in subsections (c), (d) and (e).

For note on estuarine pollution, see 49 N.C.L. Rev. 921 (1971).

§ 113-204. Propagation of shellfish. — The Department of Natural and Economic Resources is authorized to close areas of public bottoms under coastal fishing waters for such time as may be necessary in any program of propagation of shellfish. The Department of Natural and Economic Resources is authorized to expend State funds planting such areas and to manage them in ways beneficial to the overall productivity of the shellfish industry in North Carolina. The Department of Natural and Economic Resources in its discretion in accordance with desirable conservation objectives may make shellfish produced by it available to commercial fishermen generally, to those in possession of private shellfish beds, or to selected individuals cooperating with the Department of Natural and Economic Resources in demonstration projects concerned with the cultivation, harvesting, or processing of shellfish. (1921, c. 132, s. 1; C. S., s. 1959(a); 1961, c. 1189, s. 1; 1965, c. 957, s. 2; 1973, c. 1262, s. 28.)

Editor's Note. — The 1973 amendment substituted "Department of Natural and Economic Resources" for "Board."

§ 113-205. Registration of grants in navigable waters; exercise of private fishery rights. — (a) Every person claiming title to any part of the bed lying under navigable waters of any coastal county of North Carolina or any right of fishery in navigable waters of any coastal county superior to that of the general public must register the grant, charter, or other authorization under which he claims with the Secretary. Such registration must be accompanied by a survey of the claimed area, meeting criteria established by the Secretary for surveys of oyster and clam leases. All rights and titles not registered in accordance with this section on or before January 1, 1970, are hereby declared null and void. The Secretary must give notice of this section at least once each calendar year for three years by publication in a newspaper, or newspapers of general circulation throughout all coastal counties of the State. For the purpose of this subsection, "coastal county" shall mean all of the following counties: Beaufort, Bertie, Bladen, Brunswick, Camden, Carteret, Chowan, Columbus, Craven, Currituck, Dare, Gates, Halifax, Hertford, Hyde, Martin, New Hanover, Northampton, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Tyrrell, and Washington. The provisions of this section shall not apply to the land lying under any private fish pond or irrigation pond.

(b) The Marine Fisheries Commission may make reasonable regulations governing utilization of private fisheries and may require grantees or others with private rights to mark their fishery areas or private beds in navigable waters as a precondition to the right of excluding the public from exercising the private rights claimed to be secured to them. Nothing in this section is to be deemed to confer upon any grantee or other person with private rights the power to impede navigation upon or hinder any other appropriate use of the surface of navigable waters of North Carolina. (1965, c. 957, s. 2; 1971, c. 346, s. 1; 1973, c. 1262, s. 28.)

Editor's Note. — The 1973 amendment substituted "Secretary" for "Commissioner" in subsection (a) and "Marine Fisheries Commission" for "Board" in subsection (b).

For note on defining navigable waters and the application of the public trust doctrine in North Carolina, see 49 N.C.L. Rev. 888 (1971). For note on estuarine pollution, see 49 N.C.L. Rev. 921 (1971).

§ 113-206. Chart of grants, leases and fishery rights; overlapping leases and rights; contest or condemnation of claims; damages for taking of property. — (a) The Secretary must commence to prepare as expeditiously as possible charts of the waters of North Carolina containing the locations of all oyster and clam leaseholds made by the Department under the provisions of this Article and of all existing leaseholds as they are renewed under the provisions of this Article, the locations of all claims of grant of title to portions of the bed under navigable waters registered with him, and the locations of all areas in navigable waters to which a right of private fishery is claimed and registered with him. Charting or registering any claim by the Secretary in no way implies recognition by the State of the validity of the claim.

(b) In the event of any overlapping of areas leased by the Department, the Secretary shall recommend modification of the areas leased as he deems equitable to all parties. Appeal from the recommendation of the Secretary lies for either party in the same manner as for a lease applicant as to which there is a recommendation of denial or modification of lease. If there is no appeal, or upon settlement of the issue upon appeal, the modified leases must be approved by the Marine Fisheries Commission and reissued by the Secretary in the same manner as initial or renewal leases. Leaseholders must furnish the Secretary surveys of the modified leasehold areas, meeting the requisite criteria for surveys established by the Secretary.

(c) In the event of any overlapping of areas leased by the Department and of areas in which title or conflicting private right of fishery is claimed and registered under the provisions of this Article, the Secretary must give preference to the leaseholder engaged in the production of oysters or clams in commercial quantities who received the lease with no notice of the existence of any claimed grant or right of fishery. To this end, the Secretary shall cause a modification of the claim registered with him and its accompanying survey to exclude the leasehold area. Such modification effected by the Secretary has the effect of voiding the grant of title or right of fishing to the extent indicated.

(d) In the interest of conservation of the marine and estuarine resources of North Carolina, the Department of Natural and Economic Resources may institute an action in the superior court to contest the claim of title or claimed right of fishery in any navigable waters of North Carolina registered with the Secretary. In such proceeding, the burden of showing title or right of fishery, by the preponderance of the evidence, shall be upon the claiming title or right holder. In the event the claiming title or right holder prevails, the court shall fix the monetary worth of the claim. The Department of Natural and Economic Resources may elect to condemn the claim upon payment of the established owners or right holders their pro rata shares of the amount so fixed. The Department of Natural and Economic Resources may make such payments from such funds as may be available to it. An appeal lies to the appellate division by either party both as to the validity of the claim and as to the fairness of the amount fixed. The Department of Natural and Economic Resources in such actions may be represented by the Attorney General. In determining the availability of funds to the Department of Natural and Economic Resources to underwrite the costs of litigation or make condemnation payments, the use which the Department of Natural and Economic Resources proposes to make of the area in question may be considered; such payments are to be deemed necessary expenses in the course of operations attending such use or of developing or attempting to develop the area in the proposed manner.

(e) To the extent that any application of the provisions of G.S. 113-205 and this section is deemed to constitute a taking of private property, any claimant may apply to the Industrial Commission for the award of such damages as he may prove. The procedure governing such application shall follow as closely as feasible that set out in Article 31 of Chapter 143 of the General Statutes of North Carolina pertaining to tort claims against State departments and agencies, except that the limitation period upon any claims brought under the authority of this subsection is three rather than two years and the measure of damages is for any condemnation effected rather than for any tort. Where the claiming party asserts damage from the voiding of a grant or right under G.S. 113-205(a) and further asserts his minority or other disability subsequent to January 1, 1970, the claimant is granted a period of three years after attaining majority or after removal of the disability in which to prosecute the claim before the Industrial Commission. No claims whatever may be entertained by the Industrial Commission, however, after January 1, 1990. It is hereby directed that the amounts necessary to cover awards made by the Industrial Commission under the authority of this subsection be paid from funds available to the Department. (1965, c. 957, s. 2; 1969, c. 44, s. 69; c. 541, s. 11; 1973, c. 1262, s. 28.)

Editor's Note. — The 1973 amendment substituted "Secretary" for "Commissioner" in subsections (a), (b), (c) and (d) and for "Director" in subsection (b), substituted "Marine Fisheries Commission" for "Board" in subsection (b) and substituted "Department of Natural and Economic Resources" for "Board" in subsection (d).

§§ 113-207 to 113-220: Reserved for future codification purposes.

ARTICLE 17.

Administrative Provisions; Regulatory Authority of Marine Fisheries Commission and Department.

§ 113-221. Filing, codification and publication of regulations; effective date of regulations; proclamations suspending or implementing regulations; presumption of publication; judicial notice of codifications; Secretary's certificates as evidence. — (a) All regulations of the Marine Fisheries Commission promulgated under the authority of this Subchapter must be filed with the Secretary of State in accordance with Chapter 150[A] of the General Statutes. In addition, all such regulations of the Marine Fisheries Commission the violation of which constitutes a crime must be filed with the clerk of superior court of each county containing coastal fishing waters within its borders.

(b) The Secretary must periodically codify the regulations of the Marine Fisheries Commission implementing this Subchapter which are subject to annual or seasonal change; other regulations or sets of regulations need be recodified only as supplies are exhausted or substantial changes are made. The Secretary must cause to be distributed to each licensee upon purchasing his license each year the appropriate set or sets of such codified regulations, plus any supplement needed to make them current, pertaining to the activities to be engaged in by the licensee.

(c) As soon as feasible after any meeting of the Marine Fisheries Commission amending or adding regulations, the Secretary must cause to be issued to all licensees who may be affected a newsletter containing the text of such amendments or added regulations. The newsletter need not be issued if a codification containing the amended or added regulations is scheduled for distribution within a reasonable period following the meeting of the Marine Fisheries Commission.

(d) Unless an effective date is stated by the Marine Fisheries Commission, its regulations take effect immediately upon passage. Any regulation change resulting in further restrictions upon licensees or the public, however, should in the ordinary case be given a future effective date sufficiently advanced to allow for compliance with the publication procedures of this section. Where circumstances require that such restrictive regulation be put into effect immediately, the Marine Fisheries Commission should take steps to insure that actual public notice is given — in a fashion similar to that set out in subsection (e). Unless there are overriding policy considerations involved, any regulation of the Marine Fisheries Commission which will in the judgment of the Marine Fisheries Commission result in severe curtailment of the usefulness or value of equipment in which fishermen have any substantial investment should be given such a future effective date as to minimize undue potential economic loss to fishermen. Whether or not any provision may cause potential economic loss and whether or not a future effective date should be set is a matter within the complete discretion of the Marine Fisheries Commission. The Marine Fisheries Commission need not set any future effective date more than two years in advance of the passage of any regulation.

(e) The Marine Fisheries Commission may delegate to the Secretary the authority by proclamation to suspend or implement, in whole or in part, particular regulations of the Marine Fisheries Commission which may be affected by variable conditions. Such proclamations are to be issued by the Secretary. All proclamations must state the hour and date upon which they become effective and must be issued at least 48 hours in advance of the effective date and time. The Secretary must keep a permanent file of the texts of proclamations issued by him, and furnish upon request certified copies of any proclamation for use in evidence in any civil or criminal proceeding in which the text of a proclamation may be in issue. Proclamations need not be filed with the Secretary of State or with any clerk of court.

The Department must make every reasonable effort to give actual notice of the terms of any proclamation to the persons who may be affected thereby. Such effort includes press releases to communications media, posting of notices at docks and other places where persons affected may gather, personal communication by inspectors and other agents of the Department, and such other measures designed to reach the persons who may be affected.

(f) All persons who may be affected by them are under a duty to keep themselves informed of current regulations of the Marine Fisheries Commission and proclamations of the Secretary. It is no defense in any criminal prosecution for the defendant to show that he in fact received no notice of a particular regulation or proclamation. In any prosecution for violation of the provisions of any regulation or proclamation, or in which proof of matter contained in a regulation or proclamation is involved, the Department is deemed to have complied with publication procedures and the burden is on the defendant to show by the greater weight of the evidence substantial failure of compliance by the Department with the publication procedures of this section.

(g) Every court must take judicial notice of any codification of regulations issued by the Secretary within two years preceding the date of the offense charged or transaction in issue. In the absence of any indication to the contrary, such codifications are to be deemed accurate and current statements of the text of the regulations in question and it is incumbent upon any person asserting that a relevant portion of the codified text is inaccurate, or has been amended or deleted, to satisfy the court as to the text of the regulations which is in fact properly applicable.

(h) Certificates of the Secretary as to the text of a regulation or proclamation or as to any other official matter concerning the Department must be received in court as prima facie evidence of the truth of the statement in the certificate.

Certificates bearing the signature of the Secretary upon paper containing the letterhead of the Department are, in the absence of evidence to the contrary, to be accepted as genuine without any need for formal proof of the signature of the Secretary. (1915, c. 84, s. 21; 1917, c. 290, s. 7; C. S., s. 1878; 1925, c. 168, s. 2; 1935, c. 35; 1945, c. 776; 1953, cc. 774, 1134, 1251; 1963, c. 1097, s. 1; 1965, c. 957, s. 2; 1973, c. 1262, ss. 28, 86; c. 1331, s. 3.)

Editor's Note. — The 1973 amendment substituted "Marine Fisheries Commission" for "Board" and "Secretary" for "Commissioner" and "Director" throughout the section. The amendment also deleted "upon the recommendation of the Commissioner" at the end of the second sentence of subsection (e).

Pursuant to Session Laws 1973, c. 1331, s. 3, effective July 1, 1975, the reference to Chapter 150[A] has been substituted for a reference to §§ 143-195 to 143-197.

§ 113-222. Arrest, service of process and witness fees of inspectors. — All arrest fees and other fees that may be charged in any bill of costs for service of process by inspectors must be paid to the county in which the trial is held. No witness fee may be taxed in any bill of costs by virtue of the appearance of an inspector as a witness in a criminal case within his enforcement jurisdiction. Acceptance by any inspector of any arrest fee, witness fee, or any other fee to which he is not entitled is a misdemeanor punishable in the discretion of the court. (1965, c. 957, s. 2.)

§ 113-223. Reciprocal agreements by Department of Natural and Economic Resources generally. — Subject to the specific provisions of G.S. 113-153 and 113-161 relating to reciprocal provisions as to landing and selling catch and as to licenses, the Department of Natural and Economic Resources is empowered to make reciprocal agreements with other jurisdictions respecting any of the matters governed in this Subchapter. Pursuant to such agreements the Department of Natural and Economic Resources may modify provisions of this Subchapter in order to effectuate the purposes of such agreements, in the overall best interests of the conservation of marine and estuarine resources. (1915, c. 84, s. 5; 1917, c. 290, s. 10; C. S., s. 1883; 1953, c. 1086; 1965, c. 957, s. 2; 1973, c. 1262, s. 28.)

Editor's Note. — The 1973 amendment substituted "Department of Natural and Economic Resources" for "Board."

§ 113-224. Cooperative agreements by Department of Natural and Economic Resources. — The Department of Natural and Economic Resources is empowered to enter into cooperative agreements with public and private agencies and individuals respecting the matters governed in this Subchapter. Pursuant to such agreements the Department of Natural and Economic Resources may expend funds, assign employees to additional duties within or without the State, assume additional responsibilities, and take other actions that may be required by virtue of such agreements, in the overall best interests of the conservation of marine and estuarine resources. (1965, c. 957, s. 2; 1973, c. 1262, s. 28.)

Editor's Note. — The 1973 amendment substituted "Department of Natural and Economic Resources" for "Board."

§ 113-225. Inspectors not to have financial interest in fisheries. — Except as provided in this Subchapter respecting operations of demonstration and research projects by employees of the Department as part of their employment, no inspector may be financially interested in any fishing industry in the State of North Carolina. (1965, c. 957, s. 2.)

§ 113-226. Administrative authority of Department of Natural and Economic Resources; administration of funds; delegation of powers. — (a) In the overall best interests of the conservation of marine and estuarine resources, the Department of Natural and Economic Resources may lease or purchase lands, equipment, and other property; accept gifts and grants on behalf of the State; establish boating and fishing access areas; establish fisheries, fishery processing or storage plants, planted seafood beds, fish farms, and other enterprises related to the conservation of marine and estuarine resources as research or demonstration projects either alone or in cooperation with some individual or agency; sell the catch or processed fish or other marine and estuarine resources resulting from research fishing operations or demonstration projects; provide matching funds for entering into projects with some other governmental agency or with some scientific, educational, or charitable foundation or institution; condemn lands in accordance with the provisions of Chapter 40 of the General Statutes and other governing provisions of law; and sell, lease, or give away property acquired by it. Provided, that any private person selected to receive gifts or benefits by the Department be selected:

(1) With regard to the overall public interest that may result, and

(2) From a defined class upon such a rational basis open to all within the class as to prevent constitutional infirmity with respect to requirements of equal protection of the laws or prohibitions against granting exclusive privileges or emoluments.

(b) All money credited to, held by, or to be received by the Department in respect of the conservation of marine and estuarine resources must be deposited with the Department. In administering such funds and recommending expenditures, the Department must give attention to the sources of the revenues received so as to encourage disbursements to be made on an equitable basis; nevertheless, except as provided in this section, separate funds may not be established and particular projects and programs deemed to be of sufficient importance in the conservation of marine and estuarine resources may receive proportional shares of Department expenditures that are greater than the proportional shares of license and other revenues produced by such projects or programs for the Department.

(c) If as a precondition of receiving funds under any cooperative program there must be a separation of license revenues received from certain classes of licensees and utilization of such revenues for limited purposes, the Department is directed to make such arrangements for separate accounting or for separate funding as may be necessary to insure the use of the revenues for the required purposes and eligibility for the cooperative funds. In such instance, if required, such revenues may be retained by the Department until expended upon the limited purposes in question. This subsection applies whether the cooperative program is with a public or private agency and whether the Department acts alone on behalf of the State or in conjunction with the [Wildlife Resources] Commission or some other State agency.

(d) Repealed by Session Laws 1973, c. 1262, s. 28. (1965, c. 957, s. 2; 1973, c. 1262, s. 28.)

Editor's Note. — The 1973 amendment substituted "Department of Natural and Economic Resources" for "Board" near the beginning of subsection (a), deleted "for the use of the Division" following "Department" at the end of the first sentence of subsection (b), substituted "Department" for "Division" near the end of the second sentence of subsection (b), and repealed subsection (d), relating to delegation of the administrative powers of the Board of Conservation and Development.

§ 113-227: Repealed by Session Laws 1973, c. 1262, s. 28.

§ 113-228. Adoption of federal regulations. — To the extent that the Department is granted authority in this Subchapter over subject matter as to which there is concurrent federal jurisdiction, the Marine Fisheries Commission in its discretion may by reference in its regulations adopt relevant provisions of federal laws and regulations as State regulations. To prevent confusion or conflict of jurisdiction in enforcement, the Marine Fisheries Commission may provide for automatic incorporation by reference into its regulations of future changes within any particular set of federal laws or regulations relating to some subject clearly within the jurisdiction of the Department. (1965, c. 957, s. 2; 1973, c. 1262, s. 28.)

Editor's Note. — The 1973 amendment substituted "Marine Fisheries Commission" for "Board."

§ 113-229. Permits to dredge or fill in or about estuarine waters or state-owned lakes. — (a) Before any excavation or filling project is begun in any estuarine waters, tidelands, marshlands, or state-owned lakes, the party or parties desiring to do such shall first obtain a permit from the Department of Natural and Economic Resources. Granting of a State permit shall not relieve any party from the necessity of obtaining a permit from the United States Army Corps of Engineers for work in navigable waters, if the same is required. The North Carolina Department of Water and Air Resources [Department of Natural and Economic Resources] shall continue to coordinate projects pertaining to navigation with the United States Army Corps of Engineers.

(b) All applications for such permits shall include a plat of the areas in which the proposed work will take place, indicating the location, width, depth and length of any proposed channel, the disposal area, and a copy of the deed or other instrument under which the applicant claims title to the property adjoining the waters in question, (or any land covered by waters), tidelands, or marshlands, or if the applicant is not the owner, then a copy of the deed or other instrument under which the owner claims title plus written permission from the owner to carry out the project on his land.

(c) In lieu of a deed or other instrument referred to in subsection (b) of this section, the agency authorized to issue such permits may accept some other reasonable evidence of ownership of the property in question or other lawful authority to make use of the property.

(d) The applicant shall cause to be served in the manner provided by paragraph (g)(9) of this section upon an owner of each tract of riparian property adjoining that of the applicant a copy of the application filed with the State of North Carolina and each such adjacent riparian owner shall have 30 days from the date of such service to file with the Department of Natural and Economic Resources written objections to the granting of the permit to dredge or fill. An owner may be served by publication, in the manner provided by paragraph (g)(10) of this section, whenever the owner's address, whereabouts, dwelling house or usual place of abode is unknown and cannot with due diligence be ascertained, or there has been a diligent but unsuccessful attempt to serve the owner under paragraph (g)(9) of this section.

(e) Applications for permits shall be circulated by the Department of Natural and Economic Resources among all State agencies and in the discretion of the

Secretary, appropriate federal agencies, having jurisdiction over the subject matter which might be affected by the project so that such agencies will have an opportunity to raise any objections they might have. The Department may deny an application for a dredge or fill permit upon finding: (1) that there will be significant adverse effect of the proposed dredging and filling on the use of the water by the public; or (2) that there will be significant adverse effect on the value and enjoyment of the property of any riparian owners; or (3) that there will be significant adverse effect on public health, safety, and welfare; or (4) that there will be significant adverse effect on the conservation of public and private water supplies; or (5) that there will be significant adverse effect on wildlife or fresh water, estuarine or marine fisheries. In the absence of such findings, a permit shall be granted. Such permit may be conditioned upon the applicant amending his proposal to take whatever measures are reasonably necessary to protect the public interest with respect to the factors enumerated in this subsection. The Department shall act upon an application for permit within 90 days after the application is filed and failure to so act shall automatically approve the application.

(f) If any State agency or the applicant raises an objection to the action of the Department of Natural and Economic Resources regarding the permit application within 20 days after said action was taken, the Department shall refer the matter to the Marine Fisheries Commission. The Marine Fisheries Commission shall hear the matter at its next regularly scheduled meeting, but in no case more than 90 days from the date of the departmental action. At said hearing, evidence shall be taken by the review commission from all interested persons, who shall have a right to be represented by counsel. After hearing the evidence, the review commission shall make findings of fact in writing and shall affirm, modify or overrule the action of the Department concerning the permit application. Any State agency or the applicant may appeal from the ruling of the review commission to the superior court of the county where the land or any part thereof is located, pursuant to the provisions of Chapter 150[A] of the General Statutes.

(g) The following provisions, together with any additional provisions not inconsistent herewith which the review commission may prescribe, shall be applicable in connection with hearings pursuant to this Article:

(1) All hearings shall be open to the public. The review commission, or its authorized agents, shall have the authority to administer oaths.

(2) A full and complete record of all proceedings at any hearing shall be taken by a reporter appointed by the review commission or by some other method approved by the Attorney General. Any party to a proceeding shall be entitled to a copy of such record upon the payment of the reasonable cost thereof as determined by the review commission.

(3) The review commission shall follow generally the procedures applicable in civil actions in the superior court insofar as practicable, including rules and procedures with regard to the taking and use of depositions, the making and use of stipulations, and the entering into of agreed settlements and consent orders.

(4) Subpoenas or subpoenas duces tecum issued by the review commission, in connection with any hearing, shall be directed to any officer authorized by law to serve process, and the further procedures and rules of law applicable with respect thereto shall be prescribed in connection with subpoenas to the same extent as if issued by a court of record. In case of a refusal to obey a notice of hearing or subpoena issued by the review commission, application may be made to the superior court of the appropriate county for enforcement thereof.

(5) The burden of proof at any hearing shall be upon the person or agency, as the case may be, at whose instance the hearing is being held.

(6) No decision or order of the review commission shall be made in any proceeding unless the same is supported by competent, material and substantial evidence upon consideration of the whole record.

(7) Following any hearing, the review commission shall afford the parties thereto 20 days to submit proposed findings of fact and conclusions of law and any brief in connection therewith. The record in the proceeding shall show the review commission's ruling with respect to each such requested finding of fact and conclusion of law.

(8) The Department and the review commission shall give notice to all interested parties of their formal actions taken under this section, including departmental findings upon applications and calling of review commission meetings by the Department, and announcement of decisions and setting of hearing dates by the review commission.

(9) All notices which are required to be given or to be served by the Department, the review commission or by any party to a proceeding shall be given by registered or certified mail to all persons entitled thereto. The date of receipt for such registered or certified mail shall be the date when such notice is deemed to have been given. Notice by the Department or review commission may be given to any person upon whom a summons may be served in accordance with the provisions of law covering civil actions in the superior courts of this State. Any notice shall be sufficient if it reasonably sets forth the action requested or demanded or gives information as to action taken. The review commission by its rules of procedure may prescribe other necessary practices and procedures with regard to the form, content and procedure as to any particular notices. Within the meaning of this paragraph, a "notice" includes a copy of an application for a permit required to be served on adjoining riparian owners, pursuant to subsection (d) of this section.

(10) For purposes of this section, service by publication shall consist of publishing a notice of service by publication in a newspaper qualified for legal advertising in accordance with G.S. 1-597 and 1-598, and published in a county where any part of the land affected by a proposed project is located or, if no qualified newspaper is published in such county, then in a qualified newspaper published in an adjoining county, or in a county in the same judicial district, once a week for three successive weeks. If the owner's post-office address is known or can with reasonable diligence be ascertained, there shall be mailed to the owner at or immediately prior to the first publication a copy of the notice of service by publication. The mailing may be omitted if the post-office address cannot be ascertained with reasonable diligence. The notice of service by publication shall (i) designate the department of State government having jurisdiction to initially grant or deny dredge and fill permits hereunder, and identify the General Statutes section under which the permit has been sought; (ii) be directed to the owner sought to be served; (iii) identify the name and post-office address of the permit applicant; (iv) indicate whether the proposed project will involve dredging or filling or both; (v) indicate the county(ies) and township(s) in which the proposed project will be located, together with any further information descriptive of the location which the Department may wish to include; (vi) state where and at what hours a copy of the application may be obtained or inspected; and (vii) indicate the time limit for filing of objections with the Department by the owner, pursuant to subsection (d) of this section.

(h) The granting of a permit to dredge or fill shall be deemed conclusive evidence that the applicant has complied with all requisite conditions precedent

to the issuance of such permit, and his right shall not thereafter be subject to challenge by reason of any alleged omission on his part, except failure to notify adjacent riparian landowners as required by subsection (d) of this section.

(i) All materials excavated pursuant to such permit, regardless of where placed, shall be encased or entrapped in such a manner as to minimize their moving back into the affected water.

(j) None of the provisions of this section shall relieve any riparian owner of the requirements imposed by the applicable laws and regulations of the United States.

(k) Any person, firm, or corporation violating the provisions of this section shall be guilty of a misdemeanor, and shall be punished by a fine of not more than five hundred dollars ($500.00), or by imprisonment of not more than 90 days, or both. Each day's continued operation after notice by the Department to cease shall constitute a separate offense. Notice to cease shall be pursuant to G.S. 113-229(g)(9).

(l) The Secretary may, either before or after the institution of proceedings under subsection (k) of this section, institute a civil action in the superior court in the name of the State upon the relation of the Secretary, for damages, and injunctive relief, and for such other and further relief in the premises as said court may deem proper, to prevent or recover for any damage to any lands or property which the State holds in the public trust, and to restrain any violation of this section or of any provision of a dredging or filling permit issued under this section. Neither the institution of the action nor any of the proceedings thereon shall relieve any party to such proceedings from the penalty prescribed by this section for any violation of the same.

(m) This section shall apply to all persons, firms, or corporations, their employees, agents, or contractors proposing excavation or filling work in the estuarine waters, tidelands, marshlands and state-owned lakes within the State, and to work to be performed by the State government or local governments. Provided, however, the provisions of this section shall not apply to the activities and functions of the North Carolina Department of Human Resources and local health departments that are engaged in mosquito control for the protection of the health and welfare of the people of the coastal area of North Carolina as provided under G.S. 130-206 through 130-209. Provided, further, this section shall not impair the riparian right of ingress and egress to navigable waters.

(n) Within the meaning of this section:

(1) "State-owned lakes" include man-made as well as natural lakes.

(2) "Estuarine waters" means all the waters of the Atlantic Ocean within the boundary of North Carolina and all the waters of the bays, sounds, rivers, and tributaries thereto seaward of the dividing line between coastal fishing waters and inland fishing waters agreed upon by the Department of Natural and Economic Resources and the Wildlife Resources Commission, within the meaning of G.S. 113-129.

(3) "Marshland" means any salt marsh or other marsh subject to regular or occasional flooding by tides, including wind tides (whether or not the tidewaters reach the marshland areas through natural or artificial watercourses), provided this shall not include hurricane or tropical storm tides. Salt marshland or other marsh shall be those areas upon which grow some, but not necessarily all, of the following salt marsh and marsh plant species: Smooth or salt water Cordgrass (*Spartina alterniflora*), Black Needlerush (*Juncus roemerianus*), Glasswort (*Salicornia* spp.), Salt Grass (*Distichlis spicata*), Sea Lavender (*Limonium* spp.), Bulrush (*Scirpus* spp.), Saw Grass (*Cladium jamaicense*), Cattail (*Typha* spp.), Salt-Meadow Grass (*Spartina patens*), and Salt Reed-Grass (*Spartina Cynosuroides*). (1969, c. 791, s. 1; 1971, c. 1159, s. 6; 1973, c. 476, s. 128; c. 1262, ss. 28, 86; c. 1331, s. 3.)

Editor's Note. — The first 1973 amendment substituted "Department of Human Resources" for "Board of Health" in subsection (f) and for "State Board of Health" in subsection (m).

The second 1973 amendment substituted references to the Department of Natural and Economic Resources for references to the Department of Conservation and Development, references to the review commission for references to the review board, and references to the Secretary of Natural and Economic Resources for references to the Director of the Department of Conservation and Development throughout the section. The amendment also rewrote the former first, second and third sentences of subsection (f) as the present first and second sentences.

The second 1973 amendatory act, which reorganized the Department of Natural and Economic Resources, did not provide for substituting "Department of Natural and Economic Resources" for "Department of Water and Air Resources" throughout the General Statutes, but, because the functions of the former Department of Water and Air Resources have devolved upon the Department of Natural and Economic Resources, the editors have inserted "Department of Natural and Economic Resources" in brackets in the last sentence of subsection (a) of this section as set out above.

Pursuant to Session Laws 1973, c. 1331, s. 3, effective July 1, 1975, the reference to Chapter 150[A] has been substituted for a reference to Article 33 of Chapter 143.

For article on legal aspects of North Carolina coastal problems, see 49 N.C.L. Rev. 857 (1971). For note on defining navigable waters and the application of the public trust doctrine in North Carolina, see 49 N.C.L. Rev. 888 (1971). For note on preservation of the estuarine zone, see 49 N.C.L. Rev. 964 (1971).

§ 113-230. Orders to control activities in coastal wetlands. — (a) The Secretary of Natural and Economic Resources, with the approval of the Marine Fisheries Commission, may from time to time, for the purpose of promoting the public safety, health, and welfare, and protecting public and private property, wildlife and marine fisheries, adopt, amend, modify, or repeal orders regulating, restricting, or prohibiting dredging, filling, removing or otherwise altering coastal wetlands. In this section, the term "coastal wetlands" shall mean any marsh as defined in G.S. 113-229(n)(3), as amended, and such contiguous land as the Secretary reasonably deems necessary to affect by any such order in carrying out the purposes of this section.

(b) The Secretary shall, before adopting, amending, modifying or repealing any such order, hold a public hearing thereon in the county in which the coastal wetlands to be affected are located, giving notice thereof to interested State agencies and each owner or claimed owner of such wetlands by certified or registered mail at least 21 days prior thereto.

(c) Upon adoption of any such order or any order amending, modifying or repealing the same, the Secretary shall cause a copy thereof, together with a plan of the lands affected and a list of the owners or claimed owners of such lands, to be recorded in the register of deeds office in the county where the land is located, and shall mail a copy of such order and plan to each owner or claimed owner of such lands affected thereby.

(d) Any person, firm or corporation that violates any order issued under the provisions of this section shall be guilty of a misdemeanor, and shall be punished by a fine of not more than five hundred dollars ($500.00), or by imprisonment for not more than six months, or both in the discretion of the court.

(e) The superior court shall have jurisdiction in equity to restrain violations of such orders.

(f) Any person having a recorded interest in or registered claim to land affected by any such order may, within 90 days after receiving notice thereof, petition the superior court to determine whether the petitioner is the owner of the land in question, and in case he is adjudged the owner of the subject land, whether such order so restricts the use of his property as to deprive him of the practical uses thereof and is therefore an unreasonable exercise of the police power because the order constitutes the equivalent of a taking without compensation. If the court finds the order to be an unreasonable exercise of the police power, as aforesaid, the court shall enter a finding that such order shall

not apply to the land of the petitioner; provided, however, that such finding shall not affect any other land than that of the petitioner. The Secretary shall cause a copy of such finding to be recorded forthwith in the register of deeds office in the county where the land is located. The method provided in this subsection for the determination of the issue of whether any such order constitutes a taking without compensation shall be exclusive, and such issue shall not be determined in any other proceeding.

(g) After a finding has been entered that such order shall not apply to certain land as provided in the preceding subsection, the Department of Administration, upon the request of the Marine Fisheries Commission, shall take the fee or any lesser interest in such land in the name of the State by eminent domain under the provisions of Chapter 146 of the General Statutes and hold the same for the purposes set forth in this section.

(h) This section shall not repeal the powers, duties and responsibilities of the Department of Natural and Economic Resources under the provisions of G.S. 113-229. (1971, c. 1159, s. 7; 1973, c. 1262, ss. 28, 86.)

Editor's Note. — The 1973 amendment substituted "Secretary of Natural and Economic Resources" for "Director of the Department of Conservation and Development" in subsection (a) and substituted "Secretary" for "Director" in subsections (a), (b), (c) and (f). The amendment also substituted "Marine Fisheries Commission" for "Board of Conservation and Development" in subsections (a) and (g) and "Department of Natural and Economic Resources" for "Department of Conservation and Development" in subsection (h).

§§ 113-231 to 113-240: Reserved for future codification purposes.

ARTICLE 18.

Commercial and Sports Fisheries Advisory Board.

§§ 113-241 to 113-245: Repealed by Session Laws 1973, c. 1262, ss. 28, 72.

Cross Reference. — As to the Commercial and Sports Fisheries Committee, see §§ 143B-325 through 143B-327.

§§ 113-246 to 113-250: Reserved for future codification purposes.

ARTICLE 19.

Marine Fisheries Compact and Commission.

§ 113-251. Definition of terms. — (a) As used in this Article, the word "Commission" refers to the Atlantic States Marine Fisheries Commission and the word "commissioner" refers to a member of that Commission.

(b) The reference in Article III of the Compact set out in G.S. 113-252 to the chairman of the committee on commercial fisheries shall be deemed to refer to the chairman of the Marine Fisheries Commission.

(c) The reference in Article III of the Compact set out in G.S. 113-252 to the Commissioner of Commercial Fisheries shall be deemed to refer to the Secretary of Natural and Economic Resources.

(d) The reference in Article III of the Compact set out in G.S. 113-252 to the Board of the North Carolina Department of Conservation and Development shall be deemed to refer to the Secretary of Natural and Economic Resources. (1965, c. 957, s. 2; 1973, c. 1262, s. 28.)

Editor's Note. — The 1973 amendment rewrote subsections (b) and (c) and added subsection (d).

Repeal of Subsections (b) and (c). — Session Laws 1973, c. 1262, s. 86, repealed subsections (b) and (c) of this section. Section 28 of the same act amended subsections (b) and (c) and added subsection (d), and the section is set out above as thus amended, but attention is called to the repeal by this note.

§ 113-252. Atlantic States Marine Fisheries Compact and Commission. — The Governor of this State is hereby authorized and directed to execute a compact on behalf of the State of North Carolina with any one or more of the States of Maine, New Hampshire, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Delaware, Maryland, Virginia, South Carolina, Georgia, and Florida and with such other states as may enter into the compact, legally joining therein in the form substantially as follows:

ATLANTIC STATES MARINE FISHERIES COMPACT

The contracting states solemnly agree:

Article I

The purpose of this Compact is to promote the better utilization of the fisheries, marine, shell and anadromous, of the Atlantic seaboard by the development of a joint program for the promotion and protection of such fisheries, and by the prevention of the physical waste of the fisheries from any cause. It is not the purpose of this Compact to authorize the states joining herein to limit the production of fish or fish products for the purpose of establishing or fixing the price thereof, or creating and perpetuating monopoly.

Article II

This agreement shall become operative immediately as to those states executing it whenever any two or more of the States of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, South Carolina, North Carolina, Georgia and Florida have executed it in the form that is in accordance with the laws of the executing state and the Congress has given its consent. Any state contiguous with any of the aforementioned states and riparian upon waters frequented by anadromous fish, flowing into waters under the jurisdiction of any of the aforementioned states, may become a party hereto as hereinafter provided.

Article III

Each state joining herein shall appoint three representatives to a commission hereby constituted and designated as the Atlantic States Marine Fisheries Commission. The Board of the North Carolina Department of Conservation and Development shall designate either the director of the Department, the chairman of the committee on commercial fisheries, or the Commissioner of Commercial Fisheries as one member of the Commission, and the Commission on Interstate Cooperation of the State shall designate a member of the North Carolina legislature as one of the members of said Commission, and the third member of said Commission, who shall be a citizen of the State having a knowledge of and interest in marine fisheries, shall be appointed by the Governor. This Commission shall be a body corporate, with the powers and duties set forth herein.

Article IV

The duty of the said Commission shall be to make inquiry and ascertain from time to time such methods, practices, circumstances and conditions as may be disclosed for bringing about the conservation and the prevention of the depletion and physical waste of the fisheries, marine, shell and anadromous, of the Atlantic seaboard. The Commission shall have power to recommend the coordination of the exercise of the police powers of the several states within their respective jurisdictions to promote the preservation of those fisheries and their protection against overfishing, waste, depletion or any abuse whatsoever and to assure a continuing yield from the fisheries resources of the aforementioned states.

To that end the Commission shall draft and, after consultation with the advisory committee hereinafter authorized, recommend to the governors and legislatures of the various signatory states legislation dealing with the conservation of the marine, shell and anadromous fisheries of the Atlantic seaboard. The Commission shall more than one month prior to any regular meeting of the legislature in any signatory state, present to the governor of the state its recommendations relating to enactments to be made by the legislature of that state in furthering the intents and purposes of this Compact.

The Commission shall consult with and advise the pertinent administrative agencies in the states party hereto with regard to problems connected with the fisheries and recommend the adoption of such regulations as it deems advisable.

The Commission shall have power to recommend to the states party hereto the stocking of the waters of such states with fish and fish eggs, or joint stocking by some or all of the states party hereto, and when two or more of the states shall jointly stock waters the Commission shall act as the coordinating agency for such stocking.

Article V

The Commission shall elect from its number a chairman and a vice-chairman and shall appoint and at its pleasure remove or discharge such officers and employees as may be required to carry the provisions of this Compact into effect, and shall fix and determine their duties, qualifications and compensation. Said Commission shall adopt rules and regulations for the conduct of its business. It may establish and maintain one or more offices for the transaction of its business and may meet at any time or place but must meet at least once a year.

Article VI

No action shall be taken by the Commission in regard to its general affairs except by the affirmative vote of a majority of the whole number of compacting states present at any meeting. No recommendation shall be made by the Commission in regard to any species of fish except by the affirmative vote of a majority of the compacting states which have an interest in such species. The Commission shall define what shall be an interest.

Article VII

The Fish and Wildlife Service of the Department of the Interior of the government of the United States shall act as the primary research agency of the Atlantic States Marine Fisheries Commission, cooperating with the research agencies in each state for that purpose. Representatives of the said Fish and Wildlife Service shall attend the meetings of the Commission.

An advisory committee to be representative of the commercial fishermen and the saltwater anglers and such other interests of each state as the Commission deems advisable shall be established by the Commission as soon as practicable for the purpose of advising the Commission upon such recommendations as it may desire to make.

Article VIII

When any state other than those named specifically in Article II of this Compact shall become a party thereto for the purpose of conserving its anadromous fish in accordance with the provisions of Article II the participation of such state in the action of the Commission shall be limited to such species of anadromous fish.

Article IX

Nothing in this Compact shall be construed to limit the powers of any signatory state or to repeal or prevent the enactment of any legislation or the enforcement of any requirement by any signatory state imposing additional conditions and restrictions to conserve its fisheries.

Article X

Continued absence of representation or of any representative on the Commission from any state party hereto shall be brought to the attention of the governor thereof.

Article XI

The states party hereto agree to make annual appropriations to the support of the Commission in proportion to the primary market value of the products of their fisheries, exclusive of cod and haddock, as recorded in the most recently published reports of the Fish and Wildlife Service of the United States Department of the Interior, provided no state shall contribute less than two hundred dollars ($200.00) per annum and the annual contribution of each state above the minimum shall be figured to the nearest one hundred dollars ($100.00).

The compacting states agree to appropriate initially the annual amounts scheduled below, which amounts are calculated in the manner set forth herein, on the basis of the catch record of 1938. Subsequent budgets shall be recommended by a majority of the Commission and the cost thereof allocated equitably among the states in accordance with their respective interests and submitted to the compacting states.

Schedule of Initial Annual State Contributions

Maine	$ 700
New Hampshire	200
Massachusetts	2300
Rhode Island	300
Connecticut	400
New York	1300
New Jersey	800
Delaware	200
Maryland	700

Virginia	$1300
North Carolina	600
South Carolina	200
Georgia	200
Florida	1500

Article XII

This Compact shall continue in force and remain binding upon each compacting state until renounced by it. Renunciation of this Compact must be preceded by sending six months' notice in writing of intention to withdraw from the Compact to the other states party hereto. (1949, c. 1086, s. 1; 1965, c. 957, s. 18.)

State Government Reorganization. — The administration of the Fisheries Compact was transferred to the Department of Natural and Economic Resources by former § 143A-126, enacted by Session Laws 1971, c. 864.

§ 113-253. Amendment to Compact to establish joint regulation of specific fisheries. — The Governor is authorized to execute on behalf of the State of North Carolina an amendment to the Compact set out in G.S. 113-252 with any one or more of the States of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, South Carolina, Georgia, and Florida or such other states as may become party to that Compact for the purpose of permitting the states that ratify this amendment to establish joint regulation of specific fisheries common to those states through the Atlantic States Marine Fisheries Commission and their representatives on that body. Notice of intention to withdraw from this amendment shall be executed and transmitted by the Governor and shall be in accordance with Article XII of the Atlantic States Marine Fisheries Compact and shall be effective as to this State with those states which similarly ratify this amendment. This amendment shall take effect as to this State with respect to such other of the aforesaid states as take similar action.

Amendment No. 1 of the Atlantic States Marine Fisheries Compact

The states consenting to this amendment agree that any two or more of them may designate the Atlantic States Marine Fisheries Commission as a joint regulatory agency with such powers as they may jointly confer from time to time for the regulation of the fishing operations of the citizens and vessels of such designating states with respect to specific fisheries in which such states have a common interest. The representatives of such states on the Atlantic States Marine Fisheries Commission shall constitute a separate section of such Commission for the exercise of the additional powers so granted, provided that the states so acting shall appropriate additional funds for this purpose. The creation of such section as a joint regulatory agency shall not deprive the states participating therein of any of their privileges or powers or responsibilities in the Atlantic States Marine Fisheries Commission under the general compact. (1949, c. 1086, s. 2; 1965, c. 957, s. 18.)

§ 113-254. North Carolina members of Commission. — In pursuance of Article III of said Compact there shall be three members (hereinafter called commissioners) of the Atlantic States Marine Fisheries Commission (hereinafter called Commission) from the State of North Carolina. The first commissioner

from the State of North Carolina shall be the Secretary of Natural and Economic Resources, ex officio, and the term of such ex officio commissioner shall terminate at the time he ceases to hold such office, and his successor as commissioner shall be his successor as Secretary of Natural and Economic Resources. The second commissioner from the State of North Carolina shall be a legislator and member of the Commission on Interstate Cooperation of the State of North Carolina, ex officio, designated by said Commission on Interstate Cooperation, and the term of any such ex officio commissioner shall terminate at the time he ceases to hold said legislative office or said office as Commissioner on Interstate Cooperation, and his successor as commissioner shall be named in like manner. The Governor (by and with the advice and consent of the Senate) shall appoint a citizen as a third commissioner who shall have a knowledge of and interest in the marine fisheries problem. The term of said Commissioner shall be three years and he shall hold office until his successor shall be appointed and qualified. Vacancies occurring in the office of such Commissioner from any reason or cause shall be filled by appointment by the Governor (by and with the advice and consent of the Senate) for the unexpired term. The Secretary of Natural and Economic Resources appointed pursuant to Article III as ex officio commissioner may delegate, from time to time, to any deputy or other subordinate in his department or office, the power to be present and participate, including voting, as his representative or substitute at any meeting of or hearing by or other proceeding of the Commission. The terms of each of the initial three members shall begin at the date of the appointment of the appointive commissioner, provided the said Compact shall then have gone into effect in accordance with Article II of the Compact; otherwise they shall begin upon the date upon which said Compact shall become effective in accordance with said Article II.

Any commissioner may be removed from office by the Governor upon charges and after a hearing. (1949, c. 1086, s. 3; 1965, c. 957, s. 18; 1973, c. 1262, ss. 28, 86.)

Editor's Note. — The 1973 amendment rewrote the second sentence and substituted "Secretary of Natural and Economic Resources" for "The Director of the Department of Conservation and Development, the chairman of the Commercial and Sports Fisheries Committee, or the Commissioner of Commercial and Sports Fisheries" in the seventh sentence.

Session Laws 1973, c. 1262, s. 28(b)(40), provides: "The second sentence of G.S. 113-254 shall be deleted and the words 'Secretary of Natural and Economic Resources' shall be inserted in lieu thereof. . . ." The section is set out above as amended by s. 86 of the same 1973 act.

§ 113-255. Powers of Commission and commissioners. — There is hereby granted to the Commission and the commissioners thereof all the powers provided for in the said Compact and all the powers necessary or incidental to the carrying out of said Compact in every particular. All officers of the State of North Carolina are hereby authorized and directed to do all things falling within their respective provinces and jurisdiction necessary or incidental to the carrying out of said Compact in every particular; it being hereby declared to be the policy of the State of North Carolina to perform and carry out the said Compact and to accomplish the purposes thereof. All officers, bureaus, departments and persons of and in the State government or administration of the State of North Carolina are hereby authorized and directed at convenient times and upon request of the said Commission to furnish the said Commission with information and data possessed by them or any of them and to aid said Commission by loan of personnel or other means lying within their legal rights respectively. (1949, c. 1086, s. 4; 1965, c. 957, s. 18.)

§ 113-256. Powers herein granted to Commission are supplemental. — Any powers herein granted to the Commission shall be regarded as in aid of and supplemental to and in no case a limitation upon any of the powers vested in said Commission by other laws of the State of North Carolina or by the laws of the States of Maine, New Hampshire, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Delaware, Maryland, Virginia, South Carolina, Georgia and Florida or by the Congress or the terms of said Compact. (1949, c. 1086, s. 5; 1965, c. 957, s. 18.)

§ 113-257. Report of Commission to Governor and legislature; recommendations for legislative action; examination of accounts and books by Auditor. — The Commission shall keep accurate accounts of all receipts and disbursements and shall report to the Governor and the legislature of the State of North Carolina on or before the tenth day of December in each year, setting forth in detail the transactions conducted by it during the 12 months preceding December 1 of that year and shall make recommendations for any legislative action deemed by it advisable, including amendments to the statutes of the State of North Carolina which may be necessary to carry out the intent and purposes of the compact between the signatory states.

The Auditor of the State of North Carolina is hereby authorized and empowered from time to time to examine the accounts and books of the Commission, including its receipts, disbursements and such other items referring to its financial standing as such Auditor may deem proper and to report the results of such examination to the Governor of such State. (1949, c. 1086, s. 6; 1955, c. 236, s. 2; 1965, c. 957, s. 18.)

§ 113-258. Commission subject to provisions of Executive Budget Act. — The Atlantic States Marine Fisheries Commission of the State of North Carolina shall be subject to all the terms and provisions of the Executive Budget Act, Article 1 of Chapter 143 of the General Statutes of North Carolina. (1949, c. 1086, s. 7; 1955, c. 236, s. 1; 1965, c. 957, s. 18.)

§§ 113-259, 113-260: Reserved for future codification purposes.

ARTICLE 20.

Miscellaneous Regulatory Provisions.

§ 113-261. Taking fish for scientific purposes; cultural and scientific operations. — (a) The Department, the Wildlife Resources Commission, and any agency of the United States with jurisdiction over fish is hereby granted the right to take fish within the State, to conduct fish cultural operations and scientific investigations in the several waters of North Carolina, and to erect fish hatcheries and fish propagating plants without regard to any licensing or permit requirements in this Subchapter.

(b) The Department with respect to fish in coastal fishing waters and the Wildlife Resources Commission with respect to fish in inland fishing waters may provide for the issuance of permits, on such terms as they deem just and in the best interests of conservation, authorizing persons to take such fish through the use of drugs, poisons, explosives, electricity, or any other normally prohibited manner. Such permits need not be restricted solely to victims of depredations or to scientific or educational institutions, but should be issued only for good cause. (1915, c. 84, s. 7; C. S., s. 1886; 1965, c. 957, s. 2; 1973, c. 1262, s. 18.)

Editor's Note. — The 1973 amendment substituted "Wildlife Resources Commission" for "Commission."

§ 113-262. Taking by poisons, drugs, explosives or electricity prohibited; exceptions; possession of illegally killed fish as evidence. — (a) Except as otherwise provided in this Article, or in regulations permitting use of electricity to take certain fish, it is a misdemeanor punishable in the discretion of the court to take any fish through the use of poisons, drugs, explosives, or electricity.

(b) The possession of any fish which bears evidence of having been killed in violation of this section constitutes prima facie evidence that the person in possession intentionally took such fish. (1883, c. 290; Code, s. 1094; Rev., s. 3417; C. S., s. 1968; 1927, c. 107; 1953, c. 1134; 1955, c. 1053, ss. 1, 3, 4; 1957, c. 1056; 1965, c. 957, s. 2.)

§ 113-263. Inspecting plans and specifications of dams. — The Department and the Wildlife Resources Commission, in addition to other agencies primarily responsible, may inspect the plans and specifications of all dams proposed to be built, in North Carolina or elsewhere within the United States, the design or proposed mode of construction of which may have an adverse effect upon fish within the State. The Department or the Wildlife Resources Commission, as the case may be, may be heard before the appropriate agency charged with approving said plans and specifications, and due consideration shall be given to said Department or Wildlife Resources Commission in the approval or disapproval of the plans and specifications of proposed dams by the agencies so charged with said duty. (1965, c. 957, s. 2; 1973, c. 1262, s. 18.)

Editor's Note. — The 1973 amendment substituted "Wildlife Resources Commission" for "Commission."

§ 113-264. Regulatory power over property of agency. — The Department of Natural and Economic Resources and the Wildlife Resources Commission are granted the power by regulation to license, regulate, prohibit, or restrict the public as to use and enjoyment of, or harm to, any property of the Department and the Wildlife Resources Commission, and may charge the public reasonable fees for access to or use of such property. "Property" as the word is used in this section is intended to be broadly interpreted and includes lands, buildings, vessels, vehicles, equipment, markers, stakes, buoys, posted signs and other notices, trees and shrubs and artificial constructions in boating and fishing access areas, and all other property owned, leased, or managed by either the Department or the Wildlife Resources Commission. Willful destruction of any property of the Department or the Wildlife Resources Commission is a misdemeanor punishable in the discretion of the court. (1965, c. 957, s. 2; 1973, c. 1262, ss. 18, 28.)

Editor's Note. — The 1973 amendment substituted "Department of Natural and Economic Resources" for "Board" and "Wildlife Resources Commission" for "Commission."

§ 113-265. Obstructing or polluting flow of water into hatchery; throwing fish offal into waters; robbing or injuring nets, seines, buoys, etc. — (a) No person may obstruct, pollute, or diminish the natural flow of water into or through any fish hatchery in violation of the requirements of the Environmental Management Commission.

(b) It is unlawful for any person to throw or cause to be thrown into the channel of any navigable waters fish offal in any quantity likely to hinder or prevent the passage of fish along such channel. The Marine Fisheries Commission and the Wildlife Resources Commission may by regulation impose further restrictions upon the throwing of fish offal in any coastal fishing waters or inland fishing waters respectively.

(c) It is unlawful for any person without the authority of the owner of the equipment to take any fish from nets, traps, and other devices to catch fish which have been placed in the open waters of the State. Violation of this subsection is a misdemeanor punishable in the discretion of the court.

(d) Any master or other person having the management or control of a vessel in the navigable waters of the State who willfully, wantonly, and unnecessarily does injury to any seine or net which may lawfully be hauled, set, or fixed in such waters for the purpose of taking fish is guilty of a misdemeanor punishable in the discretion of the court.

(e) Any person who willfully destroys or injures any buoys, markers, stakes, nets, or other devices or property lawfully set out in the open waters of the State in connection with any fishing or fishery is guilty of a misdemeanor punishable in the discretion of the court. (1883, c. 137, s. 5; Code, ss. 3385, 3386, 3389, 3407, 3418; Rev., ss. 2444, 2465, 2478; C. S., ss. 1969, 1971, 1972; 1959, c. 405; 1965, c. 957, s. 2; 1971, c. 690, s. 4; 1973, c. 1262, ss. 18, 28.)

Cross Reference. — As to fishing from bridges, see §§ 136-102.5, 153A-242 and 160A-302.1.

Editor's Note. — The 1973 amendment substituted "Environmental Management Commission" for "Department of Water Resources and the State Stream Sanitation Committee" at the end of subsection (a) and substituted "The Marine Fisheries Commission and the Wildlife Resources Commission" for "The Board and the Commission" at the beginning of the second sentence of subsection (b).

Cited in Stanley v. Department of Conservation & Dev., 284 N.C. 15, 199 S.E.2d 641 (1973).

§§ 113-266 to 113-270: Reserved for future codification purposes.

Article 21.

Inland Fishing Licenses.

§ 113-271. Hook-and-line licenses in inland fishing waters. — (a) Except as otherwise provided in this Article, no one may fish by means of hook and line in inland fishing waters without having first procured a current and valid hook-and-line fishing license.

(b) Except where indicated otherwise, all hook-and-line fishing licenses are annual licenses. Annual fishing licenses, except for the combination hunting-fishing license, are issued beginning January 1 each year and run until the following December 31.

(c) Any resident of North Carolina who has been certified by the Department of Human Resources as a person whose vision with glasses is insufficient for use in ordinary occupations for which sight is essential shall, upon submitting an application together with an authenticated copy of such certification to the License Section of the Wildlife Resources Commission at its headquarters in Raleigh, receive a nontransferable hook-and-line fishing license and, if requested, a special trout license which shall be issued without charge and which shall be valid for the life of such person.

(d) The hook-and-line fishing licenses are granted upon such terms and for such prices as set out below. The amount stated in parentheses following the price of a license indicates the fee to be kept by a license agent when selling such license, out of the amount collected.

(1) Resident State license, $5.50 ($0.50). This license is valid only for use by an individual resident of the State.

(2) Resident State combination hunting-fishing license, $7.50 ($0.50). This license is valid only for use by an individual resident of the State. It is valid during the period set for annual hunting licenses in § 113-95.

(3) Resident county license, $2.50 ($0.25). This license is valid only for use by an individual resident of the State within the county in which he lives.
(4) Resident State daily license, $1.25 ($0.25). This license is valid only for use on a single day by an individual resident of the State.
(5) Nonresident State license, $9.50 ($0.50). This license is valid for use by an individual within the State.
(6) Nonresident State five-day license, $4.25 ($0.25). This license is valid only for use on five consecutive days by an individual within the State.
(7) Nonresident State daily license, $2.25 ($0.25). This license is valid only for use on a single day by an individual within the State. (1929, c. 335, ss. 1-4; 1931, c. 351; 1933, c. 236; 1935, c. 478; 1945, c. 529, ss. 1, 2; c. 567, ss. 1-4; 1949, c. 1203, s. 2; 1953, c. 1147; 1955, c. 198, s. 1; 1957, c. 849, s. 2; 1959, c. 164; 1961, c. 312; c. 834, ss. 3-6; 1965, c. 957, s. 2; 1969, c. 761; c. 1042, s. 9; 1973, c. 476, s. 143; c. 504.)

Editor's Note. — The first 1973 amendment substituted "Department of Human Resources" for "North Carolina Commission for the Blind" in subsection (c). The second 1973 amendment rewrote subsection (c).

§ 113-272. Special trout licenses. — (a) In addition to such hook-and-line fishing license as may be required in G.S. 113-271, no one may fish in public mountain trout waters without having first procured a current and valid special trout license.

(b) All special trout licenses are annual licenses issued beginning January 1 each year and running until the following December 31.

(c) Public mountain trout waters are those waters designated by the Wildlife Resources Commission as having been stocked with trout at public expense.

(d) The special trout licenses issued by the Wildlife Resources Commission are as follows:

(1) Resident special trout license, $2.25 ($0.25). This license is valid only for use by an individual resident of the State in public mountain trout waters.
(2) Nonresident special trout license, $4.25 ($0.25). This license is valid for use by an individual within the State in public mountain trout waters. (1953, cc. 432, 828; 1955, c. 198, s. 2; 1961, c. 834, s. 2; 1965, c. 957, s. 2; 1969, c. 1042, s. 10; 1973, c. 1262, s. 18.)

Editor's Note. — The 1973 amendment substituted "Wildlife Resources Commission" for "Commission" in subsections (c) and (d).

§ 113-273. Licenses for propagation and sale of fish. — (a) All Licenses Annual. — All licenses under this section are annual licenses issued beginning January 1 each year and running until the following December 31.

(b) License Required; Regulations Governing Licensee. — Except as otherwise provided, no person may engage in any activity as to which a license is required by this section without having first procured a current and valid license for such activity. In implementing the provisions of this section, the Wildlife Resources Commission may by regulation govern every aspect of the licensee's dealings in fish and require licensees to keep records and statistics, be subject to inspection and audit, make periodic reports, post performance bonds payable to the Wildlife Resources Commission conditioned upon faithful compliance with provisions of law, and otherwise comply with reasonable regulations and administrative requirements that may be imposed under the authority of this section.

(c) Commercial Trout Pond License. — As used in this subsection, a "commercial trout pond" is an artificial impoundment of three acres or less lying on private land and not on a natural stream, but which may be supplied through screened and regulated supply lines, which pond must be stocked exclusively with hatchery-reared mountain trout obtained from such hatcheries as may be approved by the Wildlife Resources Commission. The Wildlife Resources Commission may by regulation prescribe qualifications of operators of commercial trout ponds, standards of operation, and the conditions under which trout from such ponds may be taken, transported, possessed, bought, and sold. Commercial trout pond licenses issued by the Wildlife Resources Commission are as follows:

(1) Commercial trout fishing pond license, twenty-five dollars ($25.00). Authorizes the responsible licensed pond owner or operator to sell trout taken by fishermen from the pond to such fishermen.

(2) Commercial trout holding pond license, twenty-five dollars ($25.00). Authorizes the responsible licensed pond owner or operator to hold trout for such commercial purposes other than angling as may be authorized in the implementing regulations of the Wildlife Resources Commission.

(d) Game Fish Sale License. — The Wildlife Resources Commission may by regulation authorize and license the sale of game fish other than trout taken from private ponds for propagation purposes and for such other purposes as the Wildlife Resources Commission may specify, in the overall interests of the conservation of wildlife resources. The Wildlife Resources Commission may prescribe standards of operation and the conditions under which such fish may be taken, transported, possessed, bought, and sold. Game fish sale licenses are issued by the Wildlife Resources Commission for a fee of one dollar ($1.00).

(e) Fish Propagation License. — The Wildlife Resources Commission may by regulation authorize and license the operation of fish hatcheries for species of fish which may be found in inland fishing waters. The Wildlife Resources Commission may prescribe standards of operation, qualifications of operators, and the conditions under which such fish may be taken, transported, possessed, bought, and sold. Fish propagation licenses issued by the Wildlife Resources Commission are as follows:

(1) Trout and bass propagation license, five dollars ($5.00). Authorizes artificial propagation and sale of all species of fish permitted under the regulations of the Wildlife Resources Commission.

(2) Restricted propagation license, fifty cents ($0.50). Authorizes artificial propagation and sale of such species of fish, other than trout and bass, as may be designated in the license, in accordance with governing regulations of the Wildlife Resources Commission. (1929, c. 198, ss. 1, 2, 4; 1933, c. 430, s. 1; 1965, c. 957, s. 2; 1973, c. 1262, s. 18.)

Editor's Note. — The 1973 amendment substituted "Wildlife Resources Commission" for "Commission" throughout the section.

§ 113-274. Permits. — (a) As used in this Article, the word "permit" refers to a written authorization issued without charge by an employee or agent of the Wildlife Resources Commission to an individual or a person to conduct some activity over which the Wildlife Resources Commission has jurisdiction. Such permit may serve in lieu of any license which may otherwise be required or it may be necessary that the permit be secured in addition to adherence to regular license requirements, as the Wildlife Resources Commission may direct, in accordance with the provisions of this Subchapter.

(b) Except as otherwise specifically provided by law, no one may engage in any activity as to which a permit is required without having first procured a current and valid permit.

(c) Under such circumstances and upon such terms and conditions as it may prescribe by regulation, the Wildlife Resources Commission may issue the following permits:

(1) Possession Permit. — Authorizes the possession of freshwater fish lawfully acquired. The Wildlife Resources Commission may by regulation implement the issuance and supervision of this permit, in accordance with governing laws and regulations respecting the possession of fish.

(2) Transportation Permit. — The Wildlife Resources Commission may require the use of transportation permits by persons required to be licensed under this Article, or by persons and individuals exempt from license requirements, while transporting within the State the fish described in subdivision (1) above, as necessary to discourage unlawful taking or dealing in such fish and to control and promote the orderly and systematic transportation of fish within, into, through, and out of the State. Transportation permits may be issued for such fish transported either dead or alive, in accordance with such restrictions as may reasonably be imposed. Where convenient, the Wildlife Resources Commission may require the retention and use of the license or permit authorizing the taking or acquisition of the fish as a transportation permit. Where circumstances warrant, however, the Wildlife Resources Commission may require a separate additional transportation permit. Any substantial deviation from reasonable requirements imposed by regulation or administratively under the authority of this section renders the transportation of the fish unlawful.

(3) Exportation or Importation Permit. — Authorizes the exportation or importation of the fish described in subdivision (1) above from or into the State. The Wildlife Resources Commission may by regulation implement the issuance and supervision of this permit, in accordance with governing laws and regulations respecting the exportation and importation of such fish.

(4) Other Permits. — In implementing the provisions of this Subchapter, the Wildlife Resources Commission may require the use of such additional permits as may be necessary or desirable in carrying out the duties of the Wildlife Resources Commission. (1965, c. 957, s. 2; 1973, c. 1262, s. 18.)

Editor's Note. — The 1973 amendment substituted "Wildlife Resources Commission" for "Commission" throughout the section.

§ 113-275. General provisions respecting licenses. — (a) The Wildlife Resources Commission is authorized to make agreements with other jurisdictions as to reciprocal honoring of licenses in the best interests of the conservation of inland fishing resources.

(b) Every license issued under the provisions of this Article is effective beginning upon its date of issuance unless the license expressly provides to the contrary, in accordance with regulations of the Wildlife Resources Commission and such administrative authority to set future effective dates in particular types of cases as may be delegated by the Wildlife Resources Commission to responsible employees or agents.

(c) Every license issued under the provisions of this Article must be sold for the full prescribed amount notwithstanding that a portion of the prescribed license period may have elapsed prior to the license application.

(d) In implementing the sale and distribution of licenses issued under this Article, the Wildlife Resources Commission may require license applicants to disclose such information as necessary for determining the applicant's eligibility for a particular license. Such information as deemed desirable to assist in enforcement of license requirements may be required to be recorded on the face of any license. Fixing the form of the license may be by reasonable administrative directive, and requirements as to such form need not be embodied in regulations of the Wildlife Resources Commission in order to be validly required.

(e) Where employees of the Wildlife Resources Commission sell licenses of a type also sold through license agents, such employees must sell the licenses for the full amount and remit such full amount to the Wildlife Resources Commission without any deduction of the stipulated license agent's fee.

(f) Except as exemptions or exceptions may be provided in G.S. 113-276:

(1) All licenses and permits under this Article must be kept ready at hand by or about the person of individual licensees and permittees while engaged in the regulated operations;

(2) All licenses and permits under this Article are nontransferable; and

(3) All individuals engaged in operations subject to license or permit requirements must have an individual license or permit—except where such individuals are in the employ of and under the supervision of someone who has the license or permit or acceptable evidence of the same at hand and the activity is one for which a person not an individual may acquire a license.

(g) It is unlawful to buy, sell, lend, borrow, or in any other way transfer or receive or attempt to do any such things with respect to any nontransferable license or permit for the purpose of circumventing the requirements of this Article.

(h) It is unlawful for any person engaged in regulated operations under this Article to refuse to exhibit or display any required license, permit, or identification upon the request of any employee or agent of the Wildlife Resources Commission or of any officer authorized to enforce the provisions of this Article.

(i) It is unlawful to refuse to comply with any provisions of this Article or of regulations and administrative requirements reasonably promulgated under the authority of this Article.

(j) It is a misdemeanor punishable in the discretion of the court for any person:

(1) Knowingly to engage in any activity regulated under this Article with an improper, false, or altered license or permit;

(2) Knowingly to make any application for a license or permit to which he is not entitled;

(3) Knowingly to make any false, fraudulent, or misleading statement in applying for a license or permit under this Article; or

(4) To counterfeit, alter, or falsify any application, license, or permit under this Article. (1929, c. 335, ss. 6, 10, 11; 1945, c. 567, ss. 5, 6; 1961, c. 329; 1965, c. 957, s. 2; 1973, c. 1262, s. 18.)

Editor's Note. — The 1973 amendment substituted "Wildlife Resources Commission" for "Commission" in subsections (a), (b), (d), (e) and (h).

§ 113-276. Members of armed forces deemed residents; exemptions and exceptions. — (a) Members of the armed forces of the United States stationed

at a military facility in North Carolina are deemed residents of the State for the purpose of purchasing a resident State hook-and-line fishing license.

(b) A person holding a license under G.S. 113-273 may take the fish regulated in connection with his license without any additional license under such restrictions, including permit requirements, as the Wildlife Resources Commission may by regulation impose. Provided, that such a licensee may not take fish from public fishing waters for use in any licensed operation.

(c) Any person who owns land, or who leases and uses land primarily for purposes of cultivation, his spouse, and any dependent member of his family who is under 18 years of age and resides with him may fish during the open seasons on such lands without being subject to the fishing license requirements of G.S. 113-271 and 113-272.

(d) Any individual under 16 years of age is exempt from the fishing-license requirements of G.S. 113-271 and 113-272 anywhere in the State.

(e) A resident individual fishing with hook and line in the county of his residence using natural bait is exempt from the hook-and-line fishing-license requirements of G.S. 113-271. "Natural bait" is bait which may be beneficially digested by fish. Where a municipality is bounded by a boundary river or stream, residents of the county in which the municipality is located may fish in the boundary river or stream from those banks of such river or stream in any adjoining county lying directly opposite to the banks of the municipality in question and be deemed fishing within their county for the purposes of the exemption contained in this subsection. The same is deemed true of fishing from the banks of any island in the boundary river or stream within the area opposite the banks of the municipality or municipalities. For the purposes of this section, a boundary river or stream is such portion of a river or stream which either forms a county boundary line or follows the course of such a line. Such line may follow the middle, thread, some former channel, the edge, or some other course in, along, under, or touching the waters of such river or stream so long as the course of the river or stream substantially represents or follows the course of such boundary line.

(f) Special device licenses issued by the Wildlife Resources Commission under its authority to regulate the taking of nongame fish are not required in the following instances:

(1) When a landing net meeting the requirements set out below is used to take nongame fish in inland fishing waters.

(2) When a landing net is used to assist in taking fish in inland fishing waters when the initial and primary method of taking is by the use of hook and line. Provided, that such license requirements as may be applicable to the fishing with hook and line are met.

The landing net authorized for use under subdivision (1) above must have a handle not exceeding eight feet in length and a hoop or frame to which the net is attached not exceeding 60 inches along its outer perimeter. The license exemption as to the use of landing nets may not be construed to apply to other special fishing devices the use of which is regulated by the Wildlife Resources Commission.

(g) Bow nets which have been properly licensed by the Wildlife Resources Commission may be used in inland fishing waters designated for and used by persons other than the licensee with the permission of the licensee.

(h) The Wildlife Resources Commission may by regulation require persons subject to license requirements and persons exempt from license requirements to carry or produce such identification as may be necessary to substantiate the person's entitlement to a particular license or to a particular exemption from license requirements. (1929, c. 335, ss. 1, 10; 1945, c. 567, ss. 1, 6; 1951, c. 1112,

s. 2; 1961, cc. 312, 329; 1963, c. 170; 1965, c. 957, s. 2; 1967, cc. 127, 654; 1971, c. 1231, s. 1; 1973, c. 1262, s. 18.)

Editor's Note. — The 1973 amendment substituted "Wildlife Resources Commission" for "Commission" in subsections (b), (f), (g) and (h).

§ 113-277. Suspension and revocation of licenses or permits. — (a) Upon conviction of any licensee or permittee under this Article of a violation of any law or regulation administered by the Wildlife Resources Commission under the authority of this Subchapter, the court in its discretion may order surrender of that license or permit plus any other license or permit issued by the Wildlife Resources Commission. The court may order suspension of any license or permit for some stipulated period or may order revocation of any license or permit for the remainder of the period for which it is valid. A period of suspension may extend past the expiration date of a license or permit, but no period of suspension longer than two years may be imposed. During any period of suspension or revocation, the licensee or permittee is not entitled to purchase or apply for any replacement, renewal, or additional license or permit regulating the same activity covered by the suspended or revoked license or permit. The Wildlife Resources Commission may by administrative action and by regulation devise procedures designed to implement license or permit suspensions and revocations that may be ordered by the courts.

(b) It is a misdemeanor punishable in the discretion of the court for any person during a period of suspension or revocation under the terms of this Article:

(1) To engage in any activity licensed in this Article without the appropriate license or permit;

(2) Knowingly to make any application for a license or permit to which he is not entitled;

(3) Knowingly to make any false, fraudulent, or misleading statement in applying for a license or permit under this Article;

(4) To counterfeit, alter, or falsify any application, license, or permit under this Article;

(5) Knowingly to retain and use any license or permit which has been ordered revoked or suspended under the terms of this Article; or

(6) Willfully to circumvent the terms of suspension or revocation in any manner whatsoever. (1965, c. 957, s. 2; 1973, c. 1262, s. 18.)

Editor's Note. — The 1973 amendment substituted "Wildlife Resources Commission" for "Commission" in subsection (a).

§§ 113-278 to 113-290: Reserved for future codification purposes.

ARTICLE 22.

Regulation of Inland Fisheries.

§ 113-291. General restrictions. — Except as specifically permitted in this Subchapter or in regulations made under the authority of this Subchapter, no person may take, possess, buy, sell, or transport:

(1) Any fish taken from or found in inland fishing waters; or

(2) Any inland game fish. (1965, c. 957, s. 2.)

§ 113-292. Authority of Wildlife Resources Commission in regulation of inland fishing. — (a) The Wildlife Resources Commission is authorized to authorize, license, regulate, prohibit, prescribe, or restrict all fishing in inland fishing waters, and the taking of inland game fish in coastal fishing waters, with respect to:

(1) Time, place, character, or dimensions of any methods or equipment that may be employed in taking fish;
(2) Seasons for taking fish;
(3) Size limits on and maximum quantities of fish that may be taken, possessed, bailed to another, transported, bought, sold, or given away.

(b) The Wildlife Resources Commission is authorized to authorize, license, regulate, prohibit, prescribe, or restrict:

(1) The opening and closing of inland fishing waters, whether entirely or only as to the taking of particular classes of fish, use of particular equipment, or as to other activities within the jurisdiction of the Wildlife Resources Commission; and
(2) The possession, cultivation, transportation, importation, exportation, sale, purchase, acquisition, and disposition of all inland fisheries resources and all related equipment, implements, vessels, and conveyances as necessary to implement the work of the Wildlife Resources Commission in carrying out its duties.

To the extent not in conflict with provisions enforced by the Department, the Wildlife Resources Commission may exercise the powers conferred in this subsection in coastal fishing waters pursuant to its regulation of inland game fish in such waters.

(c) The Wildlife Resources Commission is authorized to make such regulations pertaining to the acquisition, disposition, transportation, and possession of fish in connection with private ponds as may be necessary in carrying out the provisions of this Subchapter and the overall objectives of the conservation of wildlife resources. (1965, c. 957, s. 2; 1973, c. 1262, s. 18.)

Editor's Note. — The 1973 amendment substituted "Wildlife Resources Commission" for "Commission" throughout the section.

Commission May Prohibit Certain Method of Taking Fish. — The Commission may seek to prohibit by regulation and in the public interest a reprehensible method of taking or attempting to take fish. This they have the authority to do, but only if they use language which specifically defines and describes the act or equipment they seek to prohibit. State v. Martin, 7 N.C. App. 532, 173 S.E.2d 47 (1970).

A regulation of the Commission making it unlawful "to snag fish," with no definition of the term "snag," is void for vagueness and uncertainty. State v. Martin, 7 N.C. App. 532, 173 S.E.2d 47 (1970).

§ 113-293. Regulation of floats and number of lines; obstructing rivers or creeks; keeping open fishways in dams. — (a) The Wildlife Resources Commission may not adopt any regulation to require the exclusive use of a float made of plastic or any other substance in connection with hook-and-line fishing in inland fishing waters. In regulating the technique known as "jug fishing," however, the Wildlife Resources Commission may restrict or prohibit the use of floats made of glass.

(b) The Wildlife Resources Commission may not adopt any regulation limiting the number of lines to be used by any fishermen fishing by hook and line in inland fishing waters. The Wildlife Resources Commission, however, may regulate the number of such lines used in designated public mountain trout waters.

(c) It is unlawful for any person in inland fishing waters:

(1) To set a net of any description across the main channel of any river or creek;
(2) To erect so as to extend more than three fourths of the distance across any river or creek any stand, dam, weir, hedge, or other obstruction to the passage of fish;
(3) To erect any stand, dam, weir, or hedge in any part of a river or creek required to be left open for the passage of fish; or,

(4) Having erected any dam where the same was allowed, to fail to make and keep open such slope or fishway as may be required by law to be kept open for the free passage of fish.

The provisions of this section may not be construed to conflict in any way with the laws and regulations of any other agency with jurisdiction over the activity or subject matter in question. (Code, ss. 3387-3389; Rev., s. 2457; 1909, c. 466, s. 1; 1915, c. 84, s. 21; 1917, c. 290, s. 7; C. S., ss. 1878, 1974; 1925, c. 168, s. 2; 1935, c. 35; 1945, c. 776; 1951, c. 1045, s. 1; 1953, cc. 774, 1251; 1963, c. 1097, s. 1; 1965, c. 957, s. 2; 1973, c. 1262, s. 18.)

Editor's Note. — The 1973 amendment substituted "Wildlife Resources Commission" for "Commission" in subsections (a) and (b).

§ 113-294. Penalties for unlawfully selling or buying game fish. — Any person who unlawfully sells, possesses for sale, buys, or offers or attempts to buy any game fish is guilty of a misdemeanor punishable by a fine of not less than fifty dollars ($50.00) in addition to such other punishment as the court may impose in its discretion. (1965, c. 957, s. 2.)

§§ 113-295 to 113-300: Reserved for future codification purposes.

ARTICLE 23.

Administrative Provisions; Regulatory Authority of Wildlife Resources Commission.

§ 113-301. Filing and publication of regulations. — (a) All regulations of the Wildlife Resources Commission promulgated under the authority of this Chapter or any other statutes, including provisions in Chapters 75A and 143 of the General Statutes of North Carolina, must be filed with the Secretary of State in accordance with Chapter 150[A] of the General Statutes. In addition, all such regulations of the Wildlife Resources Commission the violation of which constitutes a crime must be filed with the clerk of the superior court:

(1) Of every county in the State, in the case of regulations of general application; and

(2) Of the county or counties affected, in the case of special or local regulations affecting only a particular area.

(b) Regulations promulgated by the Wildlife Resources Commission under the authority of this Subchapter must be published at least once in some newspaper published in and having general circulation throughout the State. (1965, c. 957, s. 2; 1973, c. 1262, s. 18; c. 1331, s. 3.)

Editor's Note. — The 1973 amendment substituted "Wildlife Resources Commission" for "Commission."

Pursuant to Session Laws 1973, c. 1331, s. 3, effective July 1, 1975, the reference to Chapter 150[A] has been substituted for a reference to §§ 143-195 to 143-197 in subsection (a).

§ 113-302. Prima facie evidence from unlawful possession of game fish. — The prima facie evidence provisions of G.S. 113-103 respecting game apply equally to the possession of game fish in such establishments. (1965, c. 957, s. 2.)

§ 113-303. Arrest, service of process and witness fees of protectors. — All arrest fees and other fees that may be charged in any bill of costs for service of process by protectors must be paid to the county in which the trial is held.

No witness fee may be taxed in any bill of costs by virtue of the appearance of a protector as a witness in a criminal case within his enforcement jurisdiction. Acceptance by any protector of any arrest fee, witness fee, or any other fee to which he is not entitled is a misdemeanor punishable in the discretion of the court. (1965, c. 957, s. 2.)

§ 113-304. Reciprocal agreements by Wildlife Resources Commission. — The Wildlife Resources Commission is empowered to make reciprocal agreements with other jurisdictions respecting the matters governed in this Subchapter. Pursuant to such agreements the Wildlife Resources Commission may by regulation modify provisions of this Subchapter in order to effectuate the purposes of such agreements, in the overall best interests of the conservation of wildlife resources. (1965, c. 957, s. 2; 1973, c. 1262, s. 18.)

Editor's Note. — The 1973 amendment substituted "Wildlife Resources Commission" for "Commission."

§ 113-305. Cooperative agreements by Wildlife Resources Commission. — The Wildlife Resources Commission is empowered to enter into cooperative agreements with public and private agencies and individuals respecting the matters governed in this Subchapter. Pursuant to such agreements the Wildlife Resources Commission may expend funds, assign employees to additional duties within or without the State, assume additional responsibilities, and take other actions that may be required by virtue of such agreements, in the overall best interests of the conservation of wildlife resources. (1965, c. 957, s. 2; 1973, c. 1262, s. 18.)

Editor's Note. — The 1973 amendment substituted "Wildlife Resources Commission" for "Commission."

§ 113-306. Administrative authority of Wildlife Resources Commission; disposition of license funds; delegation of powers. — (a) In the overall best interests of the conservation of wildlife resources, the Wildlife Resources Commission may lease or purchase lands, equipment, and other property; accept gifts and grants on behalf of the State; establish wildlife refuges, management areas, and boating and fishing access areas, either alone or in cooperation with others; provide matching funds for entering into projects with some other governmental agency or with some scientific, educational, or charitable foundation or institution; condemn lands in accordance with the provisions of Chapter 40 of the General Statutes and other governing provisions of law; and sell, lease, or give away property acquired by it. Provided, that any private person selected to receive gifts or benefits by the Wildlife Resources Commission be selected:

(1) With regard to the overall public interest that may result; and

(2) From a defined class upon such a rational basis open to all within the class as to prevent constitutional infirmity with respect to requirements of equal protection of the laws or prohibitions against granting exclusive privileges or emoluments.

(b) All money credited to, held by, or to be received by the Wildlife Resources Commission from the sale of licenses authorized by this Subchapter must be consolidated and placed in the Wildlife Resources Fund.

(c) The Wildlife Resources Commission may, within the terms of policies set by regulation, delegate to the Executive Director all administrative powers granted to it. (1965, c. 957, s. 2; 1973, c. 1262, s. 18.)

Editor's Note. — The 1973 amendment substituted "Wildlife Resources Commission" for "Commission."

§ 113-307. Adoption of federal laws and regulations. — To the extent that the Wildlife Resources Commission is granted authority under this Chapter or under any other provision of law, including Chapter 75A of the General Statutes, over subject matter as to which there is concurrent federal jurisdiction, the Wildlife Resources Commission in its discretion may by reference in its regulations adopt relevant provisions of federal law and regulations as State regulations. To prevent confusion or conflict of jurisdiction in enforcement, the Wildlife Resources Commission may provide for an automatic incorporation by reference into its regulations of future changes within any particular set of federal laws or regulations relating to some subject clearly within the jurisdiction of the Wildlife Resources Commission. (1965, c. 957, s. 2; 1973, c. 1262, s. 18.)

Editor's Note. — The 1973 amendment substituted "Wildlife Resources Commission" for "Commission."

ARTICLE 23A.

Promotion of Coastal Fisheries and Seafood Industry.

§ 113-308. Definitions. — The definitions as given in G.S. 113-128 shall apply to this Article, except that the following will additionally apply:

(1) Agency: A group or an association which shall make applications and otherwise act for the fishing and seafood industry or a distinguishable part thereof. (1967, c. 890, s. 1.)

§ 113-309. Declaration of policy. — It is declared to be in the interest of the public welfare of North Carolina that those engaged in "coastal fisheries," as defined in G.S. 113-129, shall be permitted and encouraged to act jointly and cooperatively for the purposes of promoting the common good, welfare, and advancement of their industry. (1967, c. 890, s. 2.)

§ 113-310. Certain activities not to be deemed illegal or in restraint of trade. — No association, meeting or activity undertaken in pursuance of the provisions of this Article and intended to benefit all of the coastal fisheries or distinguishable part thereof hereinunder certified by the Marine Fisheries Commission shall be deemed or considered illegal or in restraint of trade. (1967, c. 890, s. 3; 1973, c. 1262, s. 28.)

Editor's Note. — The 1973 amendment substituted "Marine Fisheries Commission" for "Board."

§ 113-311. Referendum and assessment declared to be in public interest. — It is hereby declared to be in the interest of the public that the coastal fisheries or any distinguishable part thereof shall be permitted by referendum to be held among themselves as prescribed by this Article, to levy upon themselves an assessment on such respective catches, volume, landings, income, or production for the purposes of promoting the common good, welfare, and advancement of the fishing and seafood industry of North Carolina, in addition to any and all taxes, levies, and licenses in effect on June 22, 1967, or that may be enacted and levied or imposed subsequently. (1967, c. 890, s. 4.)

§ 113-312. Application to Marine Fisheries Commission for authority to conduct referendum. — Any agency fairly representative of any distinguishable part or all of the fishing and seafood industry may at any time make application in writing or petition to the Marine Fisheries Commission for certification and approval to conduct a referendum among the coastal fisheries or any distinguishable part thereof for the purpose of levying an assessment under the provisions of this Article, collecting, and utilizing the proceeds for the purposes stated in such referendum and as set forth in this Article. (1967, c. 890, s. 5; 1973, c. 1262, s. 28.)

Editor's Note. — The 1973 amendment substituted "Marine Fisheries Commission" for "Board."

§ 113-313. Action of Marine Fisheries Commission on application. — Upon receiving an application or petition as herein provided, the Marine Fisheries Commission shall at its next regular quarterly meeting consider such application as follows:

(1) The Marine Fisheries Commission shall determine if the agency is in fact fairly representative of the coastal fisheries or distinguishable part thereof making application or petitioning for referendum and record in its minutes its determination.

(2) The Marine Fisheries Commission shall determine if the application or petition is in conformity with the provisions and purposes of this Article and record in its minutes its determination.

(3) If the Marine Fisheries Commission determines in the affirmative as to (1) and (2) above, it shall authorize and empower the agency to hold and conduct a referendum on the question of whether or not members of the fishing and seafood industry, or the distinguishable part thereof, making application or petition, shall levy upon themselves an assessment under and subject to the conditions and provisions and for the purpose stated in this Article. (1967, c. 890, s. 6; 1973, c. 1262, s. 28.)

Editor's Note. — The 1973 amendment substituted "Marine Fisheries Commission" for "Board."

§ 113-314. Agency to determine time and place of referendum, amount and basis of assessment, etc.; notice of referendum. — The agency shall fix, determine, and publicly announce such referendum at least 30 days before the date set for such referendum, the date, hours, and polling places for voting in such referendum, the amount and basis of the assessment proposed to be collected, the means by which such assessment shall be collected if favorably voted upon, and the general purposes to which said amount so collected shall be applied. Such public notice shall be published at least once 20 days prior to the election in one or more newspapers having general circulation in the area where the vote is to be taken. (1967, c. 890, s. 7.)

§ 113-315. Maximum assessment. — No assessment levied on any commodity under the provisions of this Article shall exceed one percent (1%) of the average value of this commodity during the next three years for which published statistics by the State of North Carolina or the federal government are available next preceding the application or petition. (1967, c. 890, s. 8.)

§ 113-315.1. Arrangements for and management of referendum; expenses. — The arrangements for and management of any referendum conducted under the provisions of this Article shall be under the direction of the agency duly certified and authorized to conduct the same, and any and all expenses in connection herewith shall be borne by the agency. (1967, c. 890, s. 9.)

§ 113-315.2. Referendum may be by mail ballot or box ballot; who may vote. — Any referendum conducted under the provisions of this Article may be held by mail ballot or by box ballot as may be determined and publicly announced as herein provided by the agency before such referendum is called. A person licensed by the Department of Natural and Economic Resources to engage in business and commerce as may be directly affected by the paying of the assessment, or anyone who would be subject to paying such assessment should the question be voted in the affirmative, shall be eligible and may vote in such referendum. (1967, c. 890, s. 10; 1973, c. 1262, s. 86.)

Editor's Note. — The 1973 amendment substituted "Department of Natural and Economic Resources" for "Department of Conservation and Development."

§ 113-315.3. Preparation and distribution of ballots; conduct of referendum; canvass and declaration of results. — The duly certified agency shall prepare and distribute in advance of such referendum all necessary ballots for the purpose thereof, and shall under rules and regulations drawn up and promulgated by said agency, arrange for the necessary poll holders or officials for conducting the said referendum; and following said referendum and within 10 days thereafter the duly certified agency shall canvass and publicly declare the result of such referendum; except that in the event a mail ballot is used, a mail ballot shall be posted by registered mail on a prearranged date at least 30 days following announcement of same to each duly licensed voter by the agency, and a return, self-addressed envelope of suitable size and construction for containing the completed ballot with ample postage affixed shall be enclosed along with complete instructions on the voting procedure, these instructions stating that the ballot should be marked by the voter to indicate and show his preference, then inserted into the return envelope, sealed, and posted or returned within 10 days of the date of the original or first posting, and on a predesignated date and hour at least 15 days after the original mailing and at an open and public meeting, the return envelopes described above shall be opened, the ballots counted, tabulated, and the results publicly declared by the agency or its authorized representatives. (1967, c. 890, s. 11.)

§ 113-315.4. Levy and collection of assessment; use of proceeds and other funds. — If in such referendum called under the provisions of this Article two thirds or more of the voters eligible and voting vote in the affirmative and in favor of the levying and collection of such assessment proposed in such referendum, then such assessment shall be collected annually, or more often as predetermined by the agency, for the three years set forth in the call for such referendum, and the collection of such assessment shall be under such method, rules, and regulations as may be determined by the agency prior to the announcement of the referendum and included in the announcement of the referendum; said assessment so collected shall be paid into the treasury of the agency, to be used together with other funds, including donations and grants from individuals, firms, governmental agencies, or corporations, and from other fees, dues, or assessments, for the purpose set out in the referendum. (1967, c. 890, s. 12.)

§ 113-315.5. Alternative method for collection of assessment. — As an alternate method for the collection of assessments provided for in G.S. 113-310

[G.S. 113-315.4], upon the request or petition of the agency and action by the Marine Fisheries Commission as prescribed in G.S. 113-313, the Secretary shall notify, by registered letter, all persons or firms licensed by the Department of Natural and Economic Resources to engage in business and commerce as may be directly affected by the paying of the assessment, that on and after the date specified in the letter the assessment shall become due and payable, and shall be remitted by said persons or firms to the Secretary who shall thereupon pay the amount of the assessments to the agency. The books and records of all such persons and firms shall at all times during regular business hours be open for inspection by the Secretary or his duly authorized agents. (1967, c. 890, s. 13; 1973, c. 1262, ss. 28, 86.)

Editor's Note. — The 1973 amendment substituted "Marine Fisheries Commission" for "Board," "Secretary" for "Commissioner" and "Department of Natural and Economic Resources" for "Department of Conservation and Development."

The reference "§ 113-315.4" inserted in brackets following "§ 113-310" is suggested as a correction for the reference in Session Laws 1967, c. 890, s. 13, to s. 3 of that act, codified as § 113-310.

§ 113-315.6. Subsequent referendum where assessment defeated. — In the event such referendum as herein provided for shall not be voted on affirmatively by two thirds or more of the voters eligible and voting, then the agency shall have full power and authority to call another referendum for the purposes herein set forth at any time after the next succeeding 12 months, on the question of an assessment for three years. (1967, c. 890, s. 14.)

§ 113-315.7. Subsequent referendum where assessment adopted. — In the event such referendum as herein provided for shall be voted on affirmatively by two thirds or more of the voters eligible and voting, then the agency shall in its discretion have full power and authority to call and conduct during the third year after the latest referendum another referendum for the purpose set forth herein for the next ensuing three years. (1967, c. 890, s. 15.)

§ 113-315.8. Refund of assessment; refusal to pay assessment. — Any persons or firm hereinunder assessed shall have the right to demand of and receive from the treasurer or disbursing office of the agency a refund of such assessment so collected, provided such demand for refund is made in writing within 30 days from the end of the assessment year which shall be determined by the agency. Should a person or firm hereinunder assessed refuse to pay and does not pay the assessment within 30 days of when it is due and payable, then in such event suit may be brought by the duly certified agency in a court of competent jurisdiction to enforce the collection of the said assessment. (1967, c. 890, s. 16; 1971, c. 642, s. 1.)

§ 113-315.9. Bond of financial officer; audit. — Before collecting and receiving such assessments, such treasurer or financial officer shall give bond to the agency to run in favor of the agency in the amount of the estimated total of such assessments as will be collected, and from time to time the agency may alter the amount of such bond which, at all times, must be equal to the total financial assets of the agency, such bond to have as surety thereon a surety company licensed to do business in the State of North Carolina, and to be in the form and amount approved by the agency and to be filed with the chairman or executive head of such agency.

The chairman or executive head of such agency shall cause an annual certified audit to be made of the financial records of the agency. Such audit shall include, among other things, total annual compensation of each employee of the agency and detailed expenses incurred and reimbursed for each employee of the agency.

The chairman or executive head of such agency shall cause a copy of the certified audit to be submitted to the Department of Natural and Economic Resources within 60 days of the end of the agency's fiscal year and shall cause a copy of the audit, or a summary thereof, to be published at least once in one or more newspapers having general circulation in the area where the assessments are made within 60 days of the end of the agency's fiscal year. If the chairman or executive head of the agency shall fail to carry out the provisions of this paragraph, he shall be guilty of a misdemeanor. (1967, c. 890, s. 17; 1971, c. 642, s. 2; 1973, c. 1262, ss. 28, 86.)

Editor's Note. — The 1973 amendment substituted "Department of Natural and Economic Resources" for "Department of Conservation and Development" in the third sentence of the second paragraph and deleted "for transmittal to the Board of Conservation and Development" following "fiscal year" near the middle of the same sentence.

§§ 113-315.10 to 113-315.14: Reserved for future codification purposes.

ARTICLE 23B.

Fishermen's Economic Development Program.

§ 113-315.15. Short title. — This Article shall be known as the Fishermen's Economic Development Act. (1973, c. 618, s. 1.)

§ 113-315.16. Legislative findings. — The legislature finds that the fishermen of North Carolina perform essential functions in providing wholesome food for the diets of the citizens of North Carolina, that they properly earn a livelihood by performing these essential functions, that they are entitled to the same or similar governmental services provided other segments of our society so as to become more proficient in the performance of these essential functions, and that the quality of life for North Carolinians is enhanced by the economic development of the fishing industry. (1973, c. 618, s. 1.)

§ 113-315.17. Definitions. — As used in this Article:

(1) "Economic development" means: giving helpful and useful aid to improve the proficiency of the citizens, and the efficiency of the operations are improved to the end that the economic well-being of fishermen is improved, the quality of life is enhanced and equality of opportunity is provided.

(2) "Fisherman" means: any person, firm, corporation, cooperative, partnership, or any legally constituted group, engaged in the harvesting, handling, processing, packaging, and marketing of fishery or seafood products from coastal fishing waters as defined by G.S. 113-129. (1973, c. 618, s. 1.)

§ 113-315.18. Fishermen's Economic Development Program. — The Secretary of Natural and Economic Resources is hereby authorized to provide through its [his] Department of Natural and Economic Resources and the extension services of the University of North Carolina those services intended to promote the economic development of the fishermen, including but not limited to:

(1) Instituting business management services to promote better business management practices throughout the fishing and seafood industry, and to promote the better use of credit and other business management techniques.

(2) Providing counseling servies to the fishermen at all levels and assisting them in meeting the Federal and State environmental, safety and health requirements.
(3) Improving waterways, harbors, inlets, and generally the water transportation system of North Carolina so as to more efficiently and safely accommodate commercial and sport fishing craft, and to provide access to and from fishing grounds. (1973, c. 618, s. 1; c. 1262, s. 28.)

Editor's Note. — The 1973 amendment substituted "Department of Natural and Economic Resources" for "Division of Commercial and Sports Fisheries" in the introductory language.

§ 113-315.19. Personnel needs. — To effectively carry out the duties and responsibilities set forth above, the Secretary may employ or contract with the extension services of the University of North Carolina to employ the following persons:
(1) A person to have responsibility for the successful execution of the program and to coordinate as deemed desirable with other agencies of the State and federal government,
(2) A business management specialist,
(3) An insurance and finance specialist,
(4) A specialist who could understand, interpret, and counsel on regulations and requirements,
(5) A specialist in waterways, and water transportation, and
(6) Such clerical personnel as necessary to carry out the provisions of this Article. (1973, c. 618, s. 1.)

ARTICLE 24.

Miscellaneous Transitional Provisions.

§ 113-316. General statement of purpose and effect of revision of Subchapter IV. — To clarify the conservation laws of the State and the authority and jurisdiction of the Department of Natural and Economic Resources and the North Carolina Wildlife Resources Commission: Commercial fishing waters are renamed coastal fishing waters and the Department of Natural and Economic Resources is given jurisdiction over and responsibility for the marine and estuarine resources in coastal fishing waters; the laws pertaining to commercial fishing operations regulated by the Department of Natural and Economic Resources are consolidated and revised generally and broadened to reflect the jurisdictional change respecting coastal fisheries; and the connected and related laws pertaining to fisheries resources administered by the North Carolina Wildlife Resources Commission are recodified to harmonize in such revision and consolidation. (1965, c. 957, s. 1; 1973, c. 1262, ss. 28, 86.)

Editor's Note. — The 1973 amendment substituted "Department of Natural and Economic Resources" for "Department of Conservation and Development" near the beginning and again near the end of the section and for "Division of Commercial and Sports Fisheries" near the middle of the section and eliminated provisions renaming, abolishing and creating certain constituent agencies of the former Department of Conservation and Development.

§ 113-317. Effect of revision on powers of Department of Natural and Economic Resources and Wildlife Resources Commission. — The intention of this Subchapter is to continue and broaden the powers and authority of the Department of Natural and Economic Resources and the North Carolina Wildlife Resources Commission with respect to all matters pertaining to the conservation

of fisheries resources, except as specific modifications, qualifications, and restrictions may appear in this Subchapter. The failure to carry forward any specific administrative or regulatory power contained in the former statutes in Chapter 113 of the General Statutes is not to be deemed to deprive the Department or the [Wildlife Resources] Commission of the authority in question. The failure to carry forward any specific prohibitions contained in the former statutes in Chapter 113 of the General Statutes or of local laws repealed by this Subchapter does not indicate an intention to make lawful the activity formerly prohibited; in the absence of provisions in this Subchapter respecting such activity, the Department and the [Wildlife Resources] Commission in their discretion may continue, modify, or abolish the previous prohibition through the passage of regulations. In numerous instances particular provisions contained in the former law are omitted from this codification in order to leave the matter within the discretionary power of the Department of Natural and Economic Resources and the [Wildlife Resources] Commission. (1965, c. 957, s. 3; 1973, c. 1262, ss. 28, 86.)

Editor's Note. — The 1973 amendment substituted "Department of Natural and Economic Resources" for "Department of Conservation and Development" in the first sentence and for "Board" in the last sentence.

§§ 113-318 to 113-320: Repealed by Session Laws 1973, c. 1262, s. 28.

§ 113-321. Retention of boundary line between inland and commercial fishing waters; application of provisions as to commercial fishing waters to coastal fishing waters; regulation of fishing in joint fishing waters. — Subject to the power of future modification by the Department of Natural and Economic Resources and [Wildlife Resources] Commission as provided in this Subchapter, the existing boundary line between inland fishing waters and commercial fishing waters is retained as the boundary line between inland fishing waters and coastal fishing waters. Except as this Subchapter provides otherwise, all statutes, regulations, bylaws, contracts, and other legal or official documents or provisions applicable to commercial fishing waters are made applicable to coastal fishing waters. Those areas of commercial fishing waters to which hook-and-line fishing license requirements of the North Carolina Wildlife Resources Commission applied on January 1, 1965, are to be deemed joint fishing waters, subject to modification by agreement between the Department of Natural and Economic Resources and the [Wildlife Resources] Commission. Until such agreement provides otherwise, the [Wildlife Resources] Commission may continue to enforce license requirements and applicable inland fishing laws and regulations in such waters. (1965, c. 957, s. 7; 1973, c. 1262, ss. 28, 86.)

Editor's Note. — The 1973 amendment substituted "Department of Natural and Economic Resources" for "Board" in the first sentence and for "Department of Conservation and Development" in the third sentence.

§ 113-322. River designated as commercial fishing water. — Notwithstanding any other provision of this Chapter, or any rule, regulation, or administrative decision of [the Wildlife Resources] Commission, the following described areas are hereby made and designated commercial fishing waters:

White Oak River, from the point where Stella Bridge crosses said river, to Grants Creek. (1967, c. 1114.)

Cross Reference. — For provision that all references in statutes, etc., to commercial fishing waters shall apply to coastal fishing waters, see § 113-129.

Editor's Note. — Session Laws 1973, c. 1262, s. 28 (a)(1), purported to amend this section by substituting "Marine Fisheries Commission" or "Commission" for "Board of Conservation and Development" or "Board." As the words "Board of Conservation and Development" or "Board" never appeared in this section, no attempt has been made to give effect to the amendment. For clarity, "the Wildlife Resources" has been inserted preceding "Commission" in the first paragraph of the section as set out above.

§§ 113-323 to 113-377: Reserved for future codification purposes.

ARTICLE 25.

[Reserved.]

ARTICLE 26.

§§ 113-377.1 to 113-377.7: Transferred to G.S. 113-252 to 113-258 by Session Laws 1965, c. 957.

SUBCHAPTER IVA. REPEALS.

ARTICLE 26A.

Repeal of Acts.

§ 113-377.8. Repeal of certain public, public-local, special and private acts. — The following public, public-local, special and private acts are hereby repealed: Chapter 36 of the Public Laws of 1901; Chapter 113 of the Public Laws of 1901; Chapter 260 of the Public Laws of 1901; Chapter 308 of the Public Laws of 1901; Chapter 326 of the Public Laws of 1901; Chapter 370 of the Public Laws of 1901; Chapter 431 of the Public Laws of 1901; Chapter 435 of the Public Laws of 1901; Chapter 475 of the Public Laws of 1901; Chapter 589 of the Public Laws of 1901; Chapter 673 of the Public Laws of 1901; Chapter 702 of the Public Laws of 1901; Chapter 771 of the Public Laws of 1901; Chapter 131 of the Public Laws of 1903; Chapter 414 of the Public Laws of 1903; Chapter 520 of the Public Laws of 1903; Chapter 631 of the Public Laws of 1903; Chapter 650 of the Public Laws of 1903; Chapter 658 of the Public Laws of 1903; Chapter 668 of the Public Laws of 1903; Chapter 732 of the Public Laws of 1903; Chapter 752 of the Public Laws of 1903; Chapter 86 of the Public Laws of 1905; Chapter 265 of the Public Laws of 1905; Chapter 283 of the Public Laws of 1905; Chapter 351 of the Public Laws of 1905; Chapter 363 of the Public Laws of 1905; Chapter 500 of the Public Laws of 1905; Chapter 560 of the Public Laws of 1905; Chapter 386 of the Public Laws of 1907; Chapter 572 of the Public Laws of 1907; Chapter 690 of the Public Laws of 1907; Chapter 811 of the Public Laws of 1907; Chapter 977 of the Public Laws of 1907; Chapter 426 of the Public Laws of 1909; Chapter 466 of the Public Laws of 1909; Chapter 585 of the Public Laws of 1909; Chapter 755 of the Public Laws of 1909; Chapter 871 of the Public Laws of 1909; Chapter 525 of the Public-Local Laws of 1911; Chapter 547 of the Public-Local Laws of 1911; Chapter 572 of the Public-Local Laws of 1913; Chapter 587 of the Public-Local Laws of 1913; Chapter 402 of the Private Laws of 1913; Chapter 58 of the Public-Local Laws, Extra Session of 1913; Chapter 211 of the Public-Local Laws, Extra Session of 1913; Chapter 30 of the Public Laws of 1915; Chapter 180 of the Public Laws of 1915; Chapter 610 of the Public-Local Laws of 1915; Chapter 599 of the Public-Local Laws of 1917; Chapter 202 of the Public-Local Laws, Extra Session 1920; Chapter 114 of the Public-Local Laws of 1921; Chapter 384 of the Public-Local Laws of 1921; Chapter 432 of the Public-Local Laws of 1921; Chapter 439

of the Public-Local Laws of 1921; Chapter 157 of the Public-Local Laws, Extra Session of 1921; Chapter 130 of the Public-Local Laws of 1923; Chapter 352 of the Public-Local Laws of 1923; Chapter 533 of the Public-Local Laws of 1923; Chapter 548 of the Public-Local Laws of 1923; Chapter 461 of the Public-Local Laws of 1925; Chapter 623 of the Public-Local Laws of 1925; Chapter 228 of the Public-Local Laws of 1927; Chapter 208 of the Public-Local Laws of 1929; Chapter 42 of the Public Laws of 1933; Chapter 51 of the Public Laws of 1933; Chapter 241 of the Public-Local Laws of 1933; Chapter 575 of the Public-Local Laws of 1933; Chapter 365 of the Public-Local Laws of 1935; Chapter 368 of the Public-Local Laws of 1935; Chapter 509 of the Public-Local Laws of 1935; Chapter 513 of the Public-Local Laws of 1935; Chapter 352 of the Public Laws of 1937; Chapter 266 of the Public-Local Laws of 1937; Chapter 632 of the Public-Local Laws of 1937; Chapter 265 of the Public Laws of 1939; Chapter 138 of the Public-Local Laws of 1939; Chapter 179 of the Public-Local Laws of 1939; Chapter 335 of the Public-Local Laws of 1941; Chapter 221 of the Special Laws of 1947; Chapter 485 of the Special Laws of 1947; Chapter 1017 of the Special Laws of 1947; Chapter 1031 of the Special Laws of 1949.

Provided that any public, public-local, special or private law herein repealed may be covered by a regulation of the Board of Conservation and Development to effectuate the same privileges or protection therein provided upon the petition of either the representative or senator from that county or district filed within six months from the date of ratification. (1951, c. 1045, s. 2.)

Editor's Note. — The words "Special Laws" in the last three lines of the first paragraph were apparently intended to read "Session Laws."

Because this section relates to past events, no changes have been made in it pursuant to Session Laws 1973, c. 1262, which reorganized the Department of Natural and Economic Resources.

SUBCHAPTER V. OIL AND GAS CONSERVATION.

ARTICLE 27.

Oil and Gas Conservation.

Part 1. General Provisions.

§ 113-378. Persons drilling for oil or gas to register and furnish bond. — Any person, firm or corporation before making any drilling exploration in this State for oil or natural gas shall register with the Department of Natural and Economic Resources or such other State agency as may hereafter be established to control the conservation of oil or gas in this State. To provide for such registration, the drilling operator must furnish the name and address of such person, firm or corporation, and the location of the proposed drilling operations, and file with the aforesaid Department of Natural and Economic Resources a bond in the amount of five thousand dollars ($5,000) running to the State of North Carolina, conditioned that any well opened by the drilling operator upon abandonment shall be plugged in accordance with the rules and regulations of said Department of Natural and Economic Resources. (1945, c. 765, s. 2; 1971, c. 813, s. 1; 1973, c. 1262, s. 86.)

Editor's Note. — The 1973 amendment substituted "Department of Natural and Economic Resources" for "Department of Conservation and Development."

§ 113-379. Filing log of drilling and development of each well. — Upon the completion or shutting down of any abandoned well, the drilling operator shall file with the Department of Natural and Economic Resources or other State

agency, or with any division thereof hereinafter created for the regulation of drilling for oil or natural gas, a complete log of the drilling and development of each well. (1945, c. 765, s. 3; 1973, c. 1262, s. 86.)

Editor's Note. — The 1973 amendment substituted "Department of Natural and Economic Resources" for "Department of Conservation and Development."

§ 113-380. Violation a misdemeanor. — Any person, firm or officer of a corporation violating any of the provisions of G.S. 113-378 or 113-379, shall upon conviction thereof be guilty of a misdemeanor and shall be fined not less than two thousand five hundred dollars ($2,500) nor more than ten thousand dollars ($10,000) and may, in the discretion of the court, be imprisoned for not more than two years. (1945, c. 765, s. 4; 1971, c. 813, s. 2.)

Part 2. The Oil and Gas Conservation Act.

§ 113-381. Title. — This law shall be designated and known as the Oil and Gas Conservation Act. (1945, c. 702, s. 1.)

Editor's Note. — For discussion of Session Laws 1945, c. 702, see 23 N.C.L. Rev. 332.

§ 113-382. Declaration of policy. — In recognition of imminent evils that can occur in the production and use and waste of natural oil and/or gas in the absence of equal or correlative rights of owners of crude oil or natural gas in a common source of supply to produce and use the same, and in the absence of adequate measures for the protection of the environment, this law is enacted for the protection of public interests against such evils by prohibiting waste and compelling ratable production and authorizing regulations for the protection of the environment. (1945, c. 702, s. 2; 1971, c. 813, ss. 3, 4.)

"Commercial Quantities" Defined. — See opinion of Attorney General to Mr. Roy G. Sowers, Jr., Director, Department of Conservation and Development, 40 N.C.A.G. 67 (1970).

§§ 113-383 to 113-386: Repealed by Session Laws 1973, c. 1262, s. 86.

§ 113-387. Production of crude oil and gas regulated; tax assessments. — All common sources of supply of crude oil discovered after January 1, 1945, if so found necessary by the Department, shall have the production of oil therefrom controlled or regulated in accordance with the provisions of this law, and the Department is hereby authorized to assess from time to time against each barrel of oil produced and saved a tax not to exceed five mills on each barrel. All moneys so collected shall be used solely to pay the expenses and other costs in connection with the administration of this law.

All common sources of supply of natural gas discovered after January 1, 1945, if so found necessary by the Department, shall have the production of gas therefrom controlled or regulated in accordance with the provisions of this law, and the Department is hereby authorized to assess from time to time against each 1000 cubic feet of gas produced and saved from a gas well a tax not to exceed one-half mill on each 1000 cubic feet of gas. All moneys so collected shall be used solely to pay the expenses and other costs in connection with the administration of this law. (1945, c. 702, s. 7; 1973, c. 1262, s. 86.)

Editor's Note. — The 1973 amendment substituted "Department" for "Division" in four places.

§ 113-388. Collection of assessments. — Any person purchasing oil or gas in this State at the well, under any contract or agreement requiring payment for such production to the respective owners thereof, in respect of which production any sums assessed under the provisions of G.S. 113-387 are payable to the Department, is hereby authorized, empowered and required to deduct from any sums so payable to any such person the amount due the Department by virtue of any such assessment and remit that sum to the Department.

Further, any person taking oil or gas from any well in this State for use or resale, in respect of which production any sums assessed under the provisions of G.S. 113-387 are payable to the Department, shall remit any sums so due to the Department in accordance with those rules and regulations of the Department which may be adopted in regard thereto. (1945, c. 702, s. 8; 1973, c. 1262, s. 86.)

Editor's Note. — The 1973 amendment substituted "Department" for "Division" throughout the section.

§ 113-389. Definitions. — Unless the context otherwise requires, the words defined in this section shall have the following meaning when found in this law:

(1) "Department" shall mean the "Department of Natural and Economic Resources," as created by this law.

(2) "Field" shall mean the general area which is underlaid or appears to be underlaid by at least one pool; and "field" shall include the underground reservoir or reservoirs containing crude petroleum oil or natural gas, or both. The words "field" and "pool" mean the same thing when only one underground reservoir is involved; "field," unlike "pool," may relate to two or more pools.

(3) "Gas" shall mean all natural gas, including casing-head gas, and all other hydrocarbons not defined as oil in subdivision (7).

(4) "Illegal gas" shall mean gas which has been produced within the State of North Carolina from any well during any time that well has produced in excess of the amount allowed by any rule, regulation or order of the Department, as distinguished from gas produced within the State of North Carolina from a well not producing in excess of the amount so allowed, which is "legal gas."

(5) "Illegal oil" shall mean oil which has been produced within the State of North Carolina from any well during any time that that well has produced in excess of the amount allowed by rule, regulation or order of the Department, as distinguished from oil produced within the State of North Carolina from a well not producing in excess of the amount so allowed, which is "legal oil."

(6) "Illegal product" shall mean any product of oil or gas, any part of which was processed or derived, in whole or in part, from illegal oil or illegal gas or from any product thereof, as distinguished from "legal product," which is a product processed or derived to no extent from illegal oil or illegal gas.

(7) "Oil" shall mean crude petroleum oil, and other hydrocarbons, regardless of gravity, which are produced at the well in liquid form by ordinary production methods, and which are not the result of condensation of gas after it leaves the reservoir.

(8) "Owner" shall mean the person who has the right to drill into and to produce from any pool, and to appropriate the production either for himself or for himself and others.

(9) "Person" shall mean any natural person, corporation, association, partnership, receiver, trustee, guardian, executor, administrator, fiduciary or representative of any kind.

(10) "Pool" shall mean an underground reservoir containing a common accumulation of crude petroleum oil or natural gas or both. Each zone of a general structure which is completely separated from the other zone in the structure is covered by the term "pool" as used herein.

(11) "Producer" shall mean the owner of a well or wells capable of producing oil or gas, or both.

(12) "Product" means any commodity made from oil or gas and shall include refined crude oil, crude tops, topped crude, processed crude petroleum, residue from crude petroleum, cracking stock, uncracked fuel oil, fuel oil, treated crude oil, residuum, gas oil, casing-head gasoline, natural gas gasoline, naphtha, distillate, gasoline, kerosene, benzine, wash oil, waste oil, blended gasoline, lubricating oil, blends or mixtures of oil with one or more liquid products or by-products derived from oil or gas, and blends or mixtures of two or more liquid products or by-products derived from oil or gas, whether hereinabove enumerated or not.

(13) "Tender" shall mean a permit or certificate of clearance for the transportation of oil, gas or products, approved and issued or registered under the authority of the Department.

(14) "Waste" in addition to its ordinary meaning, shall mean "physical waste" as that term is generally understood in the oil and gas industry. It shall include:

a. The inefficient, excessive or improper use or dissipation of reservoir energy; and the locating, spacing, drilling, equipping, operating or producing of any oil or gas well or wells in a manner which results, or tends to result, in reducing inefficiently the quantity of oil or gas ultimately to be recovered from any pool in this State.

b. The inefficient storing of oil, and the locating, spacing, drilling, equipping, operating or producing of any oil or gas well or wells in a manner causing, or tending to cause, unnecessary or excessive surface loss or destruction of oil or gas.

c. Abuse of the correlative rights and opportunities of each owner of oil and gas in a common reservoir due to nonuniform, disproportionate, and unratable withdrawals causing undue drainage between tracts of land.

d. Producing oil or gas in such manner as to cause unnecessary water channelling or coning.

e. The operation of any oil well or wells with an inefficient gas-oil ratio.

f. The drowning with water of any stratum or part thereof capable of producing oil or gas.

g. Underground waste however caused and whether or not defined.

h. The creation of unnecessary fire hazards.

i. The escape into the open air, from a well producing both oil and gas, of gas in excess of the amount which is necessary in the efficient drilling or operation of the well.

j. Permitting gas produced from a gas well to escape into the air. (1945, c. 702, s. 9; 1973, c. 1262, s. 86.)

Editor's Note. — The 1973 amendment substituted "Department" for "Division" and "Department of Natural and Economic Resources" for "Petroleum Division" in subdivision (1) and substituted "Department" for "Division" in subdivisions (4), (5) and (13).

§ 113-390. Waste prohibited. — Waste of oil or gas as defined in this law is hereby prohibited. (1945, c. 702, s. 10.)

§ 113-391. Jurisdiction and authority of Department of Natural and Economic Resources; rules, regulations and orders. — The Department shall have jurisdiction and authority of and over all persons and property necessary to administer and enforce effectively the provisions of this law and all other laws relating to the conservation of oil and gas.

The Department shall have the authority and it shall be its duty to make such inquiries as it may think proper to determine whether or not waste over which it has jurisdiction exists or is imminent. In the exercise of such power the Department shall have the authority to collect data; to make investigations and inspections; to examine properties, leases, papers, books and records; to examine, check, test and gauge oil and gas wells, tanks, refineries, and means of transportation; to hold hearings; and to provide for the keeping of records and the making of reports; and to take such action as may be reasonably necessary to enforce this law.

The Department shall have authority to make, after hearing and notice as hereinafter provided, such reasonable rules, regulations and orders as may be necessary from time to time in the proper administration and enforcement of this law, including rules, regulations or orders for the following purposes:

(1) To require the drilling, operation, casing and plugging of wells to be done in such manner as to prevent the escape of oil or gas out of one stratum to another; to prevent the intrusion of water into an oil or gas stratum from a separate stratum; to prevent the pollution of freshwater supplies by oil, gas or salt water, or to protect the quality of the water, air, soil or any other environmental resource against injury or damage or impairment; and to require reasonable bond condition for the performance of the duty to plug each dry or abandoned well.

(2) To require directional surveys upon application of any owner who has reason to believe that a well or wells of others has or have been drilled into the lands owned by him or held by him under lease. In the event such surveys are required, the costs thereof shall be borne by the owners making the request.

(3) To require the making of reports showing the location of oil and gas wells, and the filing of logs and drilling records.

(4) To prevent the drowning by water of any stratum or part thereof capable of producing oil or gas in paying quantities, and to prevent the premature and irregular encroachment of water which reduces, or tends to reduce, the total ultimate recovery of oil or gas from any pool.

(5) To require the operation of wells with efficient gas-oil ratios, and to fix such ratios.

(6) To prevent "blow-outs," "caving" and "seepage" in the sense that conditions indicated by such terms are generally understood in the oil and gas business.

(7) To prevent fires.

(8) To identify the ownership of all oil or gas wells, producing leases, refineries, tanks, plants, structures and all storage and transportation equipment and facilities.

(9) To regulate the "shooting," perforating, and chemical treatment of wells.

(10) To regulate secondary recovery methods, including the introduction of gas, air, water or other substances into producing formations.

(11) To limit and prorate the production of oil or gas, or both, from any pool or field for the prevention of waste as herein defined.

(12) To require, either generally or in or from particular areas, certificates of clearance or tenders in connection with the transportation of oil or gas.
(13) To regulate the spacing of wells and to establish drilling units.
(14) To prevent, so far as is practicable, reasonably avoidable drainage from each developed unit which is not equalized by counter-drainage.
(15) To prevent where necessary the use of gas for the manufacture of carbon black.
(16) To regulate and, if necessary in its judgment for the protection of unique environmental values, to prohibit the location of wells in the interest of protecting the quality of the water, air, soil or any other environmental resource against injury, or damage or impairment. (1945, c. 702, s. 11; 1971, c. 813, ss. 5, 6; 1973, c. 1262, s. 86.)

Editor's Note. — The 1973 amendment substituted "Department" for "Division" in four places.

§ 113-392. Protecting pool owners; drilling units in pools; location of wells; shares in pools. — (a) Whether or not the total production from a pool be limited or prorated, no rule, regulation or order of the Department shall be such in terms or effect

(1) That it shall be necessary at any time for the producer from, or the owner of, a tract of land in the pool, in order that he may obtain such tract's just and equitable share of the production of such pool, as such share is set forth in this section, to drill and operate any well or wells on such tract in addition to such well or wells as can produce without waste such share, or
(2) As to occasion net drainage from a tract unless there be drilled and operated upon such tract a well or wells in addition to such well or wells thereon as can produce without waste such tract's just and equitable share, as set forth in this section, of the production of such pool.

(b) For the prevention of waste and to avoid the augmenting and accumulation of risks arising from the drilling of an excessive number of wells, the Department shall, after a hearing, establish a drilling unit or units for each pool. The Department may establish drainage units of uniform size for the entire pool or may, if the facts so justify, divide into zones any pool, establish a drainage unit for each zone, which unit may differ in size from that established in any other zone; and the Department may from time to time, if the facts so justify, change the size of the unit established for the entire pool or for any zone or zones, or part thereof, establishing new zones and units if the facts justify their establishment.

(c) Each well permitted to be drilled upon any drilling unit shall be drilled approximately in the center thereof, with such exception as may reasonably be necessary where it is shown, after notice and upon hearing, and the Department finds that the unit is partly outside the pool or, for some other reason, a well approximately in the center of the unit would be nonproductive or where topographical conditions are such as to make the drilling approximately in the center of the unit unduly burdensome. Whenever an exception is granted, the Department shall take such action as will offset any advantage which the person securing the exception may have over producers by reason of the drilling of the well as an exception, and so that drainage from developed units to the tract with respect to which the exception is granted will be prevented or minimized and the producer of the well drilled as an exception will be allowed to produce no more than his just and equitable share of the oil and gas in the pool, as such share is set forth in this section.

(d) Subject to the reasonable requirements for prevention of waste, a producer's just and equitable share of the oil and gas in the pool (also sometimes referred to as a tract's just and equitable share) is that part of the authorized production for the pool (whether it be the total which could be produced without any restriction on the amount of production, or whether it be an amount less than that which the pool could produce if no restriction on the amount were imposed) which is substantially in the proportion that the quantity of recoverable oil and gas in the developed area of his tract in the pool bears to the recoverable oil and gas in the total developed area of the pool, insofar as these amounts can be ascertained practically; and to that end, the rules, regulations, permits and orders of the Department shall be such as will prevent or minimize reasonably avoidable net drainage from each developed unit (that is, drainage which is not equalized by counter-drainage), and will give to each producer the opportunity to use his just and equitable share of the reservoir energy. (1945, c. 702, s. 12; 1973, c. 1262, s. 86.)

Editor's Note. — The 1973 amendment substituted "Department" for "Division" throughout the section.

§ 113-393. Development of lands as drilling unit by agreement or order of Department. — (a) Integration of Interests and Shares in Drilling Unit. — When two or more separately owned tracts of land are embraced within an established drilling unit, the owners thereof may agree validly to integrate their interests and to develop their lands as a drilling unit. Where, however, such owners have not agreed to integrate their interests, the Department shall, for the prevention of waste or to avoid drilling of unnecessary wells, require such owners to do so and to develop their lands as a drilling unit. All orders requiring such integration shall be made after notice and hearing, and shall be upon terms and conditions that are just and reasonable, and will afford to the owner of each tract the opportunity to recover or receive his just and equitable share of the oil and gas in the pool without unnecessary expense, and will prevent or minimize reasonably avoidable drainage from each developed unit which is not equalized by counter-drainage. The portion of the production allocated to the owner of each tract included in a drilling unit formed by an integration order shall, when produced, be considered as if it had been produced from such tract by a well drilled thereon.

In the event such integration is required, and provided also that after due notice to all the owners of tracts within such drilling unit of the creation of such drilling unit, and provided further that the Department has received no protest thereto, or request for hearing thereon, whether or not 10 days have elapsed after notice has been given of the creation of the drilling unit, the operator designated by the Department to develop and operate the integrated unit shall have the right to charge to each other interested owner the actual expenditures required for such purpose not in excess of what are reasonable, including a reasonable charge for supervision, and the operator shall have the right to receive the first production from the well drilled by him thereon, which otherwise would be delivered or paid to the other parties jointly interested in the drilling of the well, so that the amount due by each of them for his shares of the expense of drilling, equipping, and operating the well may be paid to the operator of the well out of production; with the value of the production calculated at the market price in the field at the time such production is received by the operator or placed to his credit. After being reimbursed for the actual expenditures for drilling and equipping and operating expenses incurred during the drilling operations and until the operator is reimbursed, the operator shall thereafter pay to the owner of each tract within the pool his ratable share of the production calculated at

the market price in the field at the time of such production less the reasonable expense of operating the well. In the event of any dispute relative to such costs, the Department shall determine the proper costs.

(b) When Each Owner May Drill. — Should the owners of separate tracts embraced within a drilling unit fail to agree upon the integration of the tracts and the drilling of a well on the unit, and should it be established that the Department is without authority to require integration as provided for in subsection (a) of this section, then, subject to all other applicable provisions of this law, the owner of each tract embraced within the drilling unit may drill on his tract, but the allowable production from each tract shall be such proportion of the allowable for the full drilling unit as the area of such separately owned tract bears to the full drilling unit.

(c) Cooperative Development Not in Restraint of Trade. — Agreements made in the interests of conservation of oil or gas, or both, or for the prevention of waste, between and among owners or operators, or both, owning separate holdings in the same oil or gas pool, or in any area that appears from geological or other data to be underlaid by a common accumulation of oil or gas, or both, or between and among such owners or operators, or both, and royalty owners therein, of a pool or area, or any part thereof, as a unit for establishing and carrying out a plan for the cooperative development and operation thereof, when such agreements are approved by the Department, are hereby authorized and shall not be held or construed to violate any of the statutes of this State relating to trusts, monopolies, or contracts and combinations in restraining of trade.

(d) Variation from Vertical. — Whenever the Department fixes the location of any well or wells on the surface, the point at which the maximum penetration of such wells into the producing formation is reached shall not unreasonably vary from the vertical drawn from the center of the hole at the surface, provided, that the Department shall prescribe rules, regulations and orders governing the reasonableness of such variation. (1945, c. 702, s. 13; 1973, c. 1262, s. 86.)

Editor's Note. — The 1973 amendment substituted "Department" for "Division" throughout the section.

§ 113-394. Limitations on production; allocating and prorating "allowables". — (a) Whenever the total amount of oil, including condensate, which all the pools in the State can produce, exceeds the amount reasonably required to meet the reasonable market demand for oil, including condensate, produced in this State, then the Department shall limit the total amount of oil, including condensate, which may be produced in the State by fixing an amount which shall be designated "allowable" for this State, which will not exceed the reasonable market demand for oil, including condensate, produced in this State. The Department shall then allocate or distribute the "allowable" for the State among the pools on a reasonable basis and in such manner as to avoid undue discrimination, and so that waste will be prevented. In allocating the "allowable" for the State, and in fixing "allowables" for pools producing oil or hydrocarbons forming condensate, or both oil and such hydrocarbons, the Department shall take into account the producing conditions and other relevant facts with respect to such pools, including the separate needs for oil, gas and condensate, and shall formulate rules setting forth standards or a program for the distribution of the "allowable" for the State, and shall distribute the "allowable" for the State in accordance with such standards or program, and where conditions in one pool or area are substantially similar to those in another pool or area, then the same standards or programs shall be applied to such pools and areas so that as far as practicable a uniform program will be followed; provided, however, the Department shall permit the production of a sufficient amount of natural gas

from any pool to supply adequately the reasonable market demand for such gas for light and fuel purposes if such production can be obtained without waste, and the condensate "allowable" for such pool shall not be less than the total amount of condensate produced or obtained in connection with the production of the gas "allowable" for light and fuel purposes, and provided further that, if the amount allocated to pool as its share of the "allowable" for the State is in excess of the amount which the pool should produce to prevent waste, then the Department shall fix the "allowable" for the pool so that waste will be prevented.

(b) The Department shall not be required to determine the reasonable market demand applicable to any single pool except in relation to all pools producing oil of similar kind and quality and in relation to the demand applicable to the State, and in relation to the effect of limiting the production of pools in the State. In allocating "allowables" to pools, the Department shall not be bound by nominations or desires of purchasers to purchase oil from particular fields or areas, and the Department shall allocate the "allowable" for the State in such manner as will prevent undue discrimination against any pool or area in favor of another or others which would result from selective buying or nominating by purchasers of oil, as such term "selective buying or nominating" is understood in the oil business.

(c) Whenever the Department limits the total amount of oil or gas which may be produced in any pool in this State to an amount less than that which the pool could produce if no restrictions were imposed (which limitation may be imposed either incidental to, or without, a limitation of the total amount of oil or gas which may be produced in the State), the Department shall prorate or distribute the "allowable" production among the producers in the pool on a reasonable basis, and so that each producer will have the opportunity to produce or receive his just and equitable share, as such share is set forth in subsection I of section 9 of this law [G.S. 113-392, subsection (d)], subject to the reasonable necessities for the prevention of waste.

(d) Whenever the total amount of gas which can be produced from any pool in this State exceeds the amount of gas reasonably required to meet the reasonable market demand therefrom, the Department shall limit the total amount of gas which may be produced from such pool. The Department shall then allocate or distribute the allowable production among the developed areas in the pool on a reasonable basis, so that each producer will have the opportunity to produce his just and equitable share, as such share is set forth in subsection I of section 9 of this law [G.S. 113-392, subsection (d)] whether the restriction for the pool as a whole is accomplished by order or by the automatic operation of the prohibitory provisions of this law. As far as applicable, the provisions of subsection (a) of this section shall be followed in allocating any "allowable" of gas for the State.

(e) After the effective date of any rule, regulation, or order of the Department fixing the "allowable" production of oil or gas, or both, or condensate, no person shall produce from any well, lease, or property more than the "allowable" production which is fixed, nor shall such amount be produced in a different manner than that which may be authorized. (1945, c. 702, s. 14; 1973, c. 1262, s. 86.)

Editor's Note. — The 1973 amendment substituted "Department" for "Division" throughout the section.

§ 113-395. Notice and payment of fee to Department before drilling or abandoning well; plugging abandoned well. — Before any well, in search of oil or gas, shall be drilled, the person desiring to drill the same shall notify the

Department upon such form as it may prescribe and shall pay a fee of fifty dollars ($50.00) for each well. The drilling of any well is hereby prohibited until such notice is given and such fee has been paid and permit granted.

Each abandoned well and each dry hole promptly shall be plugged in the manner and within the time required by regulations to be prescribed by the Department, and the owner of such well shall give notice, upon such form as the Department may prescribe, of the abandonment of each dry hole and of the owner's intention to abandon, and shall pay a fee of fifteen dollars ($15.00). No well shall be abandoned until such notice has been given and such fee has been paid. (1945, c. 702, s. 15; 1973, c. 1262, s. 86.)

Editor's Note. — The 1973 amendment substituted "Department" for "Division" in three places.

§ 113-396. Wells to be kept under control. — In order to protect further the natural gas fields and oil fields in this State, it is hereby declared to be unlawful for any person to permit negligently any gas or oil well to go wild or to get out of control. The owner of any such well shall, after 24 hours' written notice by the Department given to him or to the person in possession of such well, make reasonable effort to control such well.

In the event of the failure of the owner of such well within 24 hours after service of the notice above provided for, to control the same, if such can be done within the period, or to begin in good faith upon service of such notice, operations to control such well, or upon failure to prosecute diligently such operations, then the Department shall have the right to take charge of the work of controlling such well, and it shall have the right to proceed, through its own agents or by contract with a responsible contractor, to control the well or otherwise to prevent the escape or loss of gas or oil from such well all at the reasonable expense of the owner of the well. In order to secure to the Department the payment of the reasonable cost and expense of controlling or plugging such well, the Department shall retain the possession of the same and shall be entitled to receive and retain the rents, revenues and income therefrom until the costs and expenses incurred by the Department shall be repaid. When all such costs and expenses have been repaid, the Department shall restore possession of such well to the owner; provided, that in the event the income received by the Department shall not be sufficient to reimburse the Department as provided for in this section, the Department shall have a lien or privilege upon all of the property of the owner of such well, except such as is exempt by law, and the Department shall proceed to enforce such lien or privilege by suit brought in any court of competent jurisdiction, the same as any other civil action, and the judgment so obtained shall be executed in the same manner now provided by law for execution of judgments. Any excess over the amount due the Department which the property seized and sold may bring, after payment of court costs, shall be paid over to the owner of such well. (1945, c. 702, s. 16; 1973, c. 1262, s. 86.)

Editor's Note. — The 1973 amendment substituted "Department" for "Division" throughout the section.

§ 113-397. Hearing before Department; notice; rules, regulations or orders; public records and copies as evidence. — (a) The Department shall prescribe its rules of order or procedure in hearings or other proceedings before it under this law, but in all hearings the rules of evidence as established by law shall be applied; provided, however, that the procedure before the Department shall be summary.

(b) No rule, regulation or order, including change, renewal, or extension thereof, shall, in the absence of an emergency, be made by the Department under the provisions of this law except after a public hearing upon at least seven days' notice given in such form as may be prescribed by the Department. Such public hearing shall be held at such time, place, and in such manner as may be prescribed by the Department, and any person having any interest in the subject matter of the hearing shall be entitled to be heard.

(c) In the event an emergency is found to exist by the Department which in its judgment requires the making, changing, renewal or extension of a rule, regulation or order without first having a hearing, such emergency rule, regulation or order shall have the same validity as if a hearing with respect to the same had been held after due notice. The emergency rule, regulation or order permitted by this section shall remain in force no longer than 10 days from its effective date, and, in any event, it shall expire when the rule, regulation or order made after due notice and hearing with respect to the subject matter of such emergency rule, regulation or order becomes effective.

(d) Should the Department elect to give notice by personal service, such service may be made by any officer authorized to serve process or by any agent of the Department in the same manner as is provided by law for the service of summons in civil actions in the superior courts of this State. Proof of the service by such agent shall be by the affidavit of the person making personal service.

(e) All rules, regulations and orders made by the Department shall be in writing and shall be entered in full by the director of production and conservation in a book to be kept for such purpose by the Department, which book shall be a public record and be open to inspection at all times during reasonable office hours. A copy of such rule, regulation or order, certified by such director of production and conservation, shall be received in evidence in all courts of this State with the same effect as the original.

(f) Any interested person shall have the right to have the Department call a hearing for the purpose of taking action in respect of any matter within the jurisdiction of the Department by making a request therefor in writing. Upon the receipt of any such request, the Department shall promptly call a hearing thereon, and, after such hearing, and with all convenient speed and in any event within 30 days after the conclusion of such hearing, shall take such action with regard to the subject matter thereof as it may deem appropriate. (1945, c. 702, s. 17; 1973, c. 1262, s. 86.)

Editor's Note. — The 1973 amendment substituted "Department" for "Division" throughout the section.

§ 113-398. Procedure and powers in hearings by Department. — In the exercise and enforcement of its jurisdiction, the said Department is authorized to summon witnesses, administer oaths, make ancillary orders and require the production of records and books for the purpose of examination at any hearing or investigation conducted by it. In connection with the exercise and enforcement of its jurisdiction, the Department shall also have the right and authority to certify as for contempt, to the court of any county having jurisdiction, violations by any person of any of the provisions of this Article or of the rules, regulations or orders of the Department, and if it be found by said court that such person has knowingly and willfully violated same, then such person shall be punished as for contempt in the same manner and to the same extent and with like effect as if said contempt had been of an order, judgment or decree of the court to which said certification is made. (1945, c. 702, s. 18; 1973, c. 1262, s. 86.)

Editor's Note. — The 1973 amendment substituted "Department" for "Division" in three places.

§ 113-399. Suits by Department. — The said Department shall have the right to maintain an action in any court of competent jurisdiction within this State to enforce by injunction, mandatory injunction, and any other appropriate or legal or equitable remedy, any valid rule, order or regulation made by the Department or promulgated under the provisions of this Article, and said court shall have the authority to make and render such judgments, orders and decrees as may be proper to enforce any such rules, orders and regulations made and promulgated by the Department. (1945, c. 702, s. 19; 1973, c. 1262, s. 86.)

Editor's Note. — The 1973 amendment substituted "Department" for "Division" in three places.

§ 113-400. Assessing costs of hearings. — The said Department is hereby authorized and directed to tax and assess against the parties involved in any hearing the costs incurred therein. (1945, c. 702, s. 20; 1973, c. 1262, s. 86.)

Editor's Note. — The 1973 amendment substituted "Department" for "Division."

§ 113-401. Party to hearings; review. — The term "party" as used in this Article shall include any person, firm, corporation or association. In proceedings for review of an order or decision of said Department, the Department shall have all rights and privileges granted by this Article to any other party to such proceedings. (1945, c. 702, s. 21; 1973, c. 1262, s. 86.)

Editor's Note. — The 1973 amendment substituted "Department" for "Division" in two places.

§ 113-402. Rehearings. — Any party being dissatisfied with any order or decision of the said Department may, within 10 days from the date of the service of such order or decision, apply for a rehearing in respect to any matter determined therein; the application shall be granted or denied by the Department within 10 days from the date same shall be filed, and if the rehearing be not granted within 10 days, it shall be taken as denied. If a rehearing be granted, the matter shall be determined by the Department within 30 days after the same shall be submitted. No cause of action arising out of any order or decision of the Department shall accrue in any court to any party unless such party makes application for a rehearing as herein provided. Such application shall set forth specifically the ground or grounds on which the applicant considers such order or decision to be unlawful or unreasonable. No party shall, in any court, urge or rely upon any ground not set forth in said application. An order made after a rehearing, abrogating, changing or modifying the original order or decision, shall have the same force and effect as an original order. (1945, c. 702, s. 22; 1973, c. 1262, s. 86.)

Editor's Note. — The 1973 amendment substituted "Department" for "Division" in four places.

§ 113-403. Application for court review; copy served on director who shall notify parties. — Within 30 days after the application for a rehearing is denied, or if the application is granted, then within 30 days after the rendition of the decision on rehearing, the applicant may apply to the court of the county in which the order of the Department is to become effective for a review of such order or decision; if the order of the Department is to become effective in more than one county, the application for review shall be filed in the office of the clerk of the superior court of the county mentioned above, and shall specifically state the grounds for review upon which the applicant relies and shall designate the order or decision sought to be reviewed. The clerk of the superior court shall immediately send a certified copy thereof, by registered mail, to the director of production and conservation. The director shall immediately notify all parties who appeared in the proceedings before the Department by registered mail, that such application for review has been filed. (1945, c. 702, s. 23; 1973, c. 1262, s. 86.)

Editor's Note. — The 1973 amendment substituted "Department" for "Division" in three places.

§ 113-404. Transcript transmitted to clerk of superior court; scope of review; procedure in superior court and appellate division. — The director of production and conservation, upon receipt of said copy of the application for review, shall forthwith transmit to the clerk of the superior court in which the application has been filed, a certified transcript of all pleadings, applications, proceedings, orders or decisions of the Department and of the evidence heard by the Department on the hearings of the matter or cause; provided, that the parties, with the consent and approval of the Department, may stipulate in writing that only certain portions of the record be transcribed. Said proceedings for review shall be for the purpose of having the lawfulness or reasonableness of the original order or decision, or the order or decision on rehearing, inquired into and determined, and the superior court hearing said cause shall have the power to vacate or set aside such order or decision on the ground that such order or decision is unlawful or unreasonable. After the said transcript shall be filed in the office of the clerk of the superior court of the county in which the application is filed, the judge of said superior court may, on his motion, or on application of any parties interested therein, make an order fixing a time for the filing of abstracts and briefs and shall fix a day for the hearing of such cause. All proceedings under this section shall have precedence in any court in which they may be pending, and the hearing of the cause shall be by the court without the intervention of a jury. An appeal shall lie to the appellate division of this State from orders, judgments and decisions made by the superior court. The procedure upon the trial of such proceedings in the superior court and upon appeal to the appellate division of this State shall be the same as in other civil actions, except as herein provided. No court of this State shall have power to set aside, modify or vacate any order or decision of the Department except as herein provided. (1945, c. 702, s. 24; 1969, c. 44, s. 70; 1973, c. 1262, s. 86.)

Editor's Note. — The 1973 amendment substituted "Department" for "Division" in four places.

§ 113-405. Introduction of new or additional evidence in superior court; hearing of additional material evidence by Department. — No new or additional evidence may be introduced upon the trial of any proceedings for review under the provisions of this Article, but the cause shall be heard upon

the questions of fact and law presented by the evidence and exhibits introduced before the Department and certified to it: Provided, that if it shall be shown to the satisfaction of the court that any party to said proceeding has additional material evidence which could not, by the exercise of due diligence, have been produced at the hearing before the Department, or which for some good reason it was prevented from producing at such hearing, or if upon the trial of the proceeding the court shall find that the Department has erroneously refused to admit or consider material evidence offered by any party at the hearing before the Department, the court may, in its discretion, stay the proceedings and make an order directing the Department to hear and consider such evidence. In such cases, it shall be the duty of the Department immediately to hear and consider such evidence and make an order modifying, setting aside or affirming its former decision. The Department after hearing and considering such additional evidence shall vacate, modify, or affirm its decision and a transcript of the additional evidence and the order or decision of the Department shall be certified and forwarded to the clerk of the superior court in which such proceeding is pending and said superior court shall, on the motion of any interested party, order the trial to proceed upon the transcript as supplemented, so as to enable the court to properly determine if the order or decision of the Department as originally made or as modified is in any respect unlawful or unreasonable. (1945, c. 702, s. 25; 1973, c. 1262, s. 86.)

Editor's Note. — The 1973 amendment substituted "Department" for "Division" throughout the section.

§ 113-406. Effect of pendency of review; stay of proceedings. — The filing or pendency of the application for review provided for in this Article shall not in itself stay or suspend the operation of any order or decision of the Department, but, during the pendency of such proceeding the court, in its discretion, may stay or suspend, in whole or in part, the operation of the order or decision of the Department. No order so staying or suspending an order or decision of the Department shall be made by any court of this State otherwise than on five days' notice and, after a hearing, and if a stay or suspension is allowed the order granting the same shall contain a specific finding, based upon evidence submitted to the court and identified by reference thereto, that great or irreparable damage would otherwise result to the petitioner and specifying the nature of the damage. (1945, c. 702, s. 26; 1973, c. 1262, s. 86.)

Editor's Note. — The 1973 amendment substituted "Department" for "Division" in three places.

§ 113-407. Stay bond. — In case the order or decision of the Department is stayed or suspended, the order or judgment of the court shall not become effective until a bond shall have been executed and filed with and approved by the court, payable to the Department, sufficient in amount and security to secure the prompt payment, by the party petitioning for the stay, of all damages caused by the delay in the enforcement of the order or decision of the Department. (1945, c. 702, s. 27; 1973, c. 1262, s. 86.)

Editor's Note. — The 1973 amendment substituted "Department" for "Division" in three places.

§ 113-408. Enjoining violation of laws and regulations; service of process; application for drilling well to include residence address of applicant. — Whenever it shall appear that any person is violating, or threatening to violate, any statute of this State with respect to the conservation of oil or gas, or both, or any provision of this law, or any rule, regulation or order made thereunder by any act done in the operation of any well producing oil or gas, or by omitting any act required to be done thereunder, the Department, through the Attorney General, may bring suit against such person in the superior court in the county in which the well in question is located, to restrain such person or persons from continuing such violation or from carrying out the threat of violation. In such suit the Department may obtain injunctions, prohibitory and mandatory, including temporary restraining orders and temporary injunctions, as the facts may warrant, including, when appropriate, an injunction restraining any person from moving or disposing of illegal oil, illegal gas or illegal product, and any or all such commodities may be ordered to be impounded or placed under the control of an agent appointed by the court if, in the judgment of the court, such action is advisable.

If any such defendant cannot be personally served with summons in that county, personal jurisdiction of that defendant in such suit may be obtained by service made on any employee or agent of that defendant working on or about the oil or gas well involved in such suit, and by the Department mailing a copy of the complaint in the action to the defendant at the address of the defendant then recorded with the director of production and conservation.

Each application for the drilling of a well in search of oil or gas in this State shall include the address of the residence of the applicant or each applicant, which address shall be the address of each person involved in accordance with the records of the director of production and conservation, until such address is changed on the records of the Department after written request. (1945, c. 702, s. 28; 1973, c. 1262, s. 86.)

Editor's Note. — The 1973 amendment substituted "Department" for "Division" in four places.

§ 113-409. Punishment for making false entries, etc. — Any person who, for the purpose of evading this law, or of evading any rule, regulation, or order made thereunder, shall intentionally make or cause to be made any false entry or statement of fact in any report required to be made by this law or by any rule, regulation, or order made hereunder; or who, for such purpose, shall make or cause to be made any false entry in any account, record, or memorandum kept by any person in connection with the provisions of this law or of any rule, regulation or order made thereunder; or who, for such purpose, shall omit to make, or cause to be omitted, full, true and correct entries in such accounts, records, or memoranda, of all facts and transactions pertaining to the interest or activities in the petroleum industry of such person as may be required by the Department under authority given in this law or by any rule, regulation, or order made hereunder; or who, for such purpose shall remove out of the jurisdiction of the State, or who shall mutilate, alter, or by any other means falsify, any book, record, or other paper, pertaining to the transactions regulated by this law, or by any rule, regulation, or order made hereunder, shall be deemed guilty of a misdemeanor and shall be subject, upon conviction in any court of competent jurisdiction, to a fine of not more than five hundred dollars ($500.00), or imprisonment for a term of not more than six months, or both such fine and imprisonment. (1945, c. 702, s. 29; 1973, c. 1262, s. 86.)

Editor's Note. — The 1973 amendment substituted "Department" for "Division" near the middle of the section.

§ 113-410. Penalties for other violations. — Any person who knowingly and willfully violates any provision of this law, or any rule, regulation, or order of the Department made hereunder, shall, in the event a penalty for such violation is not otherwise provided for herein, be subject to a penalty of not to exceed one thousand dollars ($1,000) a day for each and every day of such violation, and for each and every act of violation, such penalty to be recovered in a suit in the superior court of the county where the defendant resides, or in the county of the residence of any defendant if there be more than one defendant, or in the superior court of the county where the violation took place. The place of suit shall be selected by the Department, and such suit, by direction of the Department, shall be instituted and conducted in the name of the Department by the Attorney General. The payment of any penalty as provided for herein shall not have the effect of changing illegal oil into legal oil, illegal gas into legal gas, or illegal product into legal product, nor shall such payment have the effect of authorizing the sale or purchase or acquisition, or the transportation, refining, processing, or handling in any other way, of such illegal oil, illegal gas or illegal product, but, to the contrary, penalty shall be imposed for each prohibited transaction relating to such illegal oil, illegal gas or illegal product.

Any person knowingly and willfully aiding or abetting any other person in the violation of any statute of this State relating to the conservation of oil or gas, or the violation of any provision of this law, or any rule, regulation, or order made thereunder, shall be subject to the same penalties as prescribed herein for the violation by such other person. (1945, c. 702, s. 30; 1973, c. 1262, s. 86.)

Editor's Note. — The 1973 amendment substituted "Department" for "Division" in four places in the first paragraph.

§ 113-411. Dealing in or handling of illegal oil, gas or product prohibited. — (a) The sale, purchase or acquisition, or the transportation, refining, processing or handling in any other way of illegal oil, illegal gas or illegal product is hereby prohibited. All persons purchasing any petroleum product must first be licensed to do so by the Department.

(b) Unless and until the Department provides for certificates of clearance or tenders, or some other method, so that any person may have an opportunity to determine whether any contemplated transaction of sale, purchase or acquisition, or transportation, refining, processing or handling in any other way, involves illegal oil, illegal gas or illegal product, no penalty shall be imposed for the sale, purchase or acquisition, or the transportation, refining, processing or handling in any other way of illegal oil, illegal gas or illegal product, except under circumstances hereinafter stated. Penalties shall be imposed for the commission of each transaction prohibited in this section when the person committing the same knows that illegal oil, illegal gas or illegal product is involved in such transaction, or when such person could have known or determined such fact by the exercise of reasonable diligence or from facts within his knowledge. However, regardless of lack of actual notice or knowledge, penalties as provided in this law shall apply to any sale, purchase or acquisition, and to the transportation, refining, processing or handling in any other way, of illegal oil, illegal gas or illegal product, where administrative provision is made for identifying the character of the commodity as to its legality. It shall likewise be a violation for which penalties shall be imposed for any person to sell, purchase or acquire, or to transport, refine, process or handle in any other way

any oil, gas or any product without complying with any rule, regulation or order of the Department relating thereto. (1945, c. 702, s. 31; 1973, c. 1262, s. 86.)

Editor's Note. — The 1973 amendment substituted "Department" for "Petroleum Division" in subsection (a) and for "Division" in two places in subsection (b).

§ 113-412. Seizure and sale of contraband oil, gas and product. — Apart from, and in addition to, any other remedy or procedure which may be available to the Department, or any penalty which may be sought against or imposed upon any person with respect to violations relating to illegal oil, illegal gas, or illegal product, all illegal oil, illegal gas and illegal product shall, except under such circumstances as are stated herein, be contraband and shall be seized and sold, and the proceeds applied as herein provided. Such sale shall not take place unless the court shall find, in the proceeding provided for in this paragraph, that the commodity involved is contraband. Whenever the Department believes that illegal oil, illegal gas or illegal product is subject to seizure and sale, as provided herein, it shall, through the Attorney General, have issued a warrant of attachment and bring a civil action in rem for that purpose in the superior court of the county where the commodity is found, or the action may be maintained in connection with any suit or cross bill for injunction or for penalty relating to any prohibited transaction involving such illegal oil, illegal gas or illegal product. Any interested person who may show himself to be adversely affected by any such seizure and sale shall have the right to intervene in such suit to protect his rights.

The action referred to above shall be strictly in rem and shall proceed in the name of the State as plaintiff against the illegal oil, illegal gas or illegal product mentioned in the complaint, as defendant, and no bond or bonds shall be required of the plaintiff in connection therewith. Upon the filing of the complaint, the clerk of the court shall issue a summons directed to the sheriff of the county, or to such other officer or person as the court may authorize to serve process, requiring him to summon any and all persons (without undertaking to name them) who may be interested in the illegal oil, illegal gas, or illegal product mentioned in the complaint to appear and answer within 30 days after the issuance and service of such summons. The summons shall contain the style and number of the suit and a very brief statement of the nature of the cause of action. It shall be served by posting one copy thereof at the courthouse door of the county where the commodity involved in the suit is alleged to be located and by posting another copy thereof near the place where the commodity is alleged to be located. Copy of such summons shall be posted at least five days before the return day stated therein, and the posting of such copy shall constitute constructive possession of such commodity by the State. A copy of the summons shall also be published once each week for four weeks in some newspaper published in the county where the suit is pending and having a bona fide circulation therein. No judgment shall be pronounced by any court condemning such commodity as contraband until after the lapse of five days from the last publication of said summons. Proof of service of said summons, and the manner thereof, shall be as provided by general law.

Where it appears by a verified pleading on the part of the plaintiff, or by affidavit, or affidavits, or by oral testimony, that grounds for the seizure and sale exist, the clerk, in addition to the summons or warning order, shall issue a warrant of attachment, which shall be signed by the clerk and bear the seal of the court. Such warrant of attachment shall specifically describe the illegal oil, illegal gas or illegal product, so that the same may be identified with reasonable certainty. It shall direct the sheriff to whom it is addressed to take into his custody, actual or constructive, the illegal oil, illegal gas or illegal product, described therein, and to hold the same subject to the orders of the

court. Said warrant of attachment shall be executed as a writ of attachment is executed. No bond shall be required before the issuance of such warrant of attachment, and the sheriff shall be responsible upon his official bond for the proper execution thereof.

In a proper case, the court may direct the sheriff to deliver the custody of any illegal oil, illegal gas or illegal product seized by him under a warrant of attachment, to a commissioner to be appointed by the court, which commissioner shall act as the agent of the court and shall give bond with such approved surety as the court may direct, conditioned that he will faithfully conserve such illegal oil, illegal gas or illegal product, as may come into his custody and possession in accordance with the orders of the court; provided, that the court may in its discretion appoint any member of the Department or any agent of the Department as such commissioner of the court.

Sales of illegal oil, illegal gas or illegal product seized under the authority of this law, and notices of such sales, shall be in accordance with the laws of this State relating to the sale and disposition of attached property; provided, however, that where the property is in custody of a commissioner of the court, the sale shall be held by said commissioner and not by the sheriff. For his services hereunder, such commissioner shall receive a reasonable fee to be paid out of the proceeds of the sale or sales to be fixed by the court ordering such sale.

The court may order that the commodity be sold in specified lots or portions, and at specified intervals, instead of being sold at one time. Title to the amount sold shall pass as of the date of the law which is found by the court to make the commodity contraband. The judgment shall provide for payment of the proceeds of the sale into the general fund of the State Treasurer, after first deducting the costs in connection with the proceedings and the sale. The amount sold shall be treated as legal oil, legal gas or legal product, as the case may be, in the hands of the purchaser, but the purchaser and the commodity shall be subject to all applicable laws, and rules, regulations and orders with respect to further sale or purchase or acquisition, and with respect to the transportation, refining, processing, or handling in any other way, of the commodity purchased.

Nothing in this section shall deny or abridge any cause of action a royalty owner, or a lien holder, or any other claimant, may have, because of the forfeiture of the illegal oil, illegal gas, or illegal product, against the person whose act resulted in such forfeiture. No illegal oil, illegal gas or illegal product shall be sold for less than the average market value at the time of sale of similar products of like grade and character. (1945, c. 702, s. 32; 1973, c. 1262, s. 86.)

Editor's Note. — The 1973 amendment substituted "Department" for "Division" in two places in the first and fourth paragraphs.

§ 113-413. Funds for administration. — If the Governor shall proclaim and declare this law to be in full force and effect prior to March 1, 1947, the funds necessary for the administration of this law shall be provided by the Governor from the Contingency and Emergency Fund. (1945, c. 702, s. 33.)

§ 113-414. Filing list of renewed leases in office of register of deeds. — On December 31 of each year, or within 10 days thereafter, every person, firm or corporation holding petroleum leases shall file in the office of the register of deeds of the county within which the land covered by such leases is located, a list showing the leases which have been renewed for the ensuing year. (1945, c. 702, s. 34.)

§ 113-415. Conflicting laws. — No provision of this Article shall be construed to repeal, amend, abridge or otherwise affect the authority and responsibility

vested in the North Carolina Environmental Management Commission by Article 7 of Chapter 87, pertaining to the location, construction, repair, operation and abandonment of wells, or the authority or responsibility vested in the Department of Human Resources and the Commission for Health Services by Article 13, Chapter 130, of the General Statutes pertaining to public water-supply requirements. (1971, c. 813, s. 7; 1973, c. 476, s. 128; c. 1262, s. 23.)

Editor's Note. — The first 1973 amendment substituted "Department of Human Resources and the Commission for Health Services" for "North Carolina State Board of Health."

The second 1973 amendment substituted "Environmental Management Commission" for "Board of Water and Air Resources."

SUBCHAPTER VI. WELL DRILLING.

ARTICLE 28.

Drillers Using Power Machinery.

§§ 113-416 to 113-419: Repealed by Session Laws 1959, c. 779, s. 3.

Chapter 113A.
Pollution Control and Environment.

Article 1.
Environmental Policy Act.

Sec.
113A-1. Title.
113A-2. Purposes.
113A-3. Declaration of State environmental policy.
113A-4. Cooperation of agencies; reports; availability of information.
113A-5. Review of agency actions involving major adverse changes or conflicts.
113A-6. Conformity of administrative procedures to State environmental policy.
113A-7. Other statutory obligations of agencies.
113A-8. Major development projects.
113A-9. Definitions.
113A-10. Provisions supplemental.
113A-11 to 113A-20. [Reserved.]

Article 2.
Interstate Environmental Compact.

113A-21. Title.
113A-22. Purpose.
113A-23. Compact provisions.
113A-24 to 113A-29. [Reserved.]

Article 3.
Natural and Scenic Rivers System.

113A-30. Short title.
113A-31. Declaration of policy.
113A-32. Declaration of purpose.
113A-33. Definitions.
113A-34. Types of scenic rivers.
113A-35. Criteria for system.
113A-35.1. Components of system.
113A-36. Administrative agency; federal grants; additions to the system; regulations.
113A-37. Raising the status of an area.
113A-38. Land acquisition.
113A-39. Claim and allowance of charitable deduction for contribution or gift of easement.
113A-40. Component as part of State park, wildlife refuge, etc.
113A-41. Component as part of national wild and scenic river system.
113A-42. Violations.
113A-43. Authorization of advances.
113A-44 to 113A-49. [Reserved.]

Article 4.
Sedimentation Pollution Control Act of 1973.

Sec.
113A-50. Short title.
113A-51. Preamble.
113A-52. Definitions.
113A-53. [Repealed.]
113A-54. Powers and duties of the Commission.
113A-55. Authority of the Secretary.
113A-56. Jurisdiction of the Commission.
113A-57. Mandatory standards for land-disturbing activity.
113A-58. Enforcement authority of the Commission.
113A-59. Educational activities.
113A-60. Local erosion control programs.
113A-61. Approval of plans.
113A-62. Cooperation with the United States.
113A-63. Financial and other assistance.
113A-64. Penalties.
113A-65. Injunctive relief.
113A-66. Civil relief.
113A-67 to 113A-71. [Reserved.]

Article 5.
North Carolina Appalachian Trails System Act.

113A-72. Short title.
113A-73. Policy and purpose.
113A-74. Appalachian Trails System; connecting or side trails; coordination with the National Trails System Act.
113A-75. Assistance under this Article with the National Trails System Act (PL 90-543).
113A-76. Acquisition of rights-of-way and lands; manner of acquiring.
113A-77. Expenditures authorized.
113A-78 to 113A-82. [Reserved.]

Article 6.
North Carolina Trails System.

113A-83. Short title.
113A-84. Declaration of policy and purpose.
113A-85. Definitions.
113A-86. Composition of Trails System.
113A-87. Authority to designate trails.
113A-88. North Carolina Trails Committee; composition; meetings and functions.
113A-89. Location of trails.
113A-90. Scenic easements within right-of-way.
113A-91. Trails within parks; conflict of laws.
113A-92. Uniform trail markers.
113A-93. Administrative policy.
113A-94. Incorporation in National Trails System.
113A-95 to 113A-99. [Reserved.]

Article 7.

Coastal Area Management.

Part 1. Organization and Goals.

Sec.
113A-100. Short title.
113A-101. Cooperative State-local program.
113A-102. Legislative findings and goals.
113A-103. Definitions.
113A-104. Coastal Resources Commission.
113A-105. Coastal Resources Advisory Council.

Part 2. Planning Processes.

113A-106. Scope of planning processes.
113A-107. State guidelines for the coastal area.
113A-108. Effect of State guidelines.
113A-109. County letter of intent; timetable for preparation of land-use plan.
113A-110. Land-use plans.
113A-111. Effect of land-use plan.
113A-112. Planning grants.

Part 3. Areas of Environmental Concern.

113A-113. Areas of environmental concern; in general.
113A-114. Designation of interim areas of environmental concern; notice of developments within such areas.
113A-115. Designation of areas of environmental concern.

Part 4. Permit Letting and Enforcement.

113A-116. Local government letter of intent.
113A-117. Implementation and enforcement programs.
113A-118. Permit required.
113A-119. Permit applications generally.
113A-120. Grant or denial of permits.
113A-121. Permits for minor developments under expedited procedures.
113A-122. Permits under quasi-judicial procedures.
113A-123. Judicial review.
113A-124. Additional powers and duties.
113A-125. Transitional provisions.
113A-126. Injunctive relief and penalties.
113A-127. Coordination with the federal government.
113A-128. Protection of landowners' rights.
113A-129 to 113A-134. [Reserved.]

Article 8.

North Carolina Land Conservancy Corporation.

113A-135. Creation.
113A-136. Legislative findings and purposes.
113A-137. Board of trustees.
113A-138. The Executive Director.
113A-139. Powers of the board of trustees.
113A-140. Restrictions on purchase and sale of property.
113A-141. Sale of assets to State of North Carolina.
113A-142. Procedure for appropriation of State funds.
113A-143. Approval of Council of State required.
113A-144 to 113A-149. [Reserved.]

Article 9.

Land Policy Act.

113A-150. Short title.
113A-151. Findings, intent and purpose.
113A-152. Definitions.
113A-153. North Carolina Land Policy Council.
113A-154. Advisory Committee on Land Policy.
113A-155. State land policy.
113A-156. State land classification system.
113A-157. Compensation of Council members.
113A-158. Protection of rights.
113A-159. Interpretation.

ARTICLE 1.

Environmental Policy Act.

§ 113A-1. Title. — This Article shall be known as the North Carolina Environmental Policy Act of 1971. (1971, c. 1203, s. 1.)

Cited in Civic Improvement Comm'n v. Volpe, 459 F.2d 957 (4th Cir. 1972).

§ 113A-2. Purposes. — The purposes of this Article are: to declare a State policy which will encourage the wise, productive, and beneficial use of the natural resources of the State without damage to the environment, maintain a healthy and pleasant environment, and preserve the natural beauty of the State; to encourage an educational program which will create a public awareness of our environment and its related programs; to require agencies of the State to consider and report upon environmental aspects and consequences of their

actions involving the expenditure of public moneys; and to provide means to implement these purposes. (1971, c. 1203, s. 2.)

§ 113A-3. Declaration of State environmental policy. — The General Assembly of North Carolina, recognizing the profound influence of man's activity on the natural environment, and desiring, in its role as trustee for future generations, to assure that an environment of high quality will be maintained for the health and well-being of all, declares that it shall be the continuing policy of the State of North Carolina to conserve and protect its natural resources and to create and maintain conditions under which man and nature can exist in productive harmony. Further, it shall be the policy of the State to seek, for all of its citizens, safe, healthful, productive and aesthetically pleasing surroundings; to attain the widest range of beneficial uses of the environment without degradation, risk to health or safety; and to preserve the important historic and cultural elements of our common inheritance. (1971, c. 1203, s. 3.)

§ 113A-4. Cooperation of agencies; reports; availability of information. The General Assembly authorizes and directs that, to the fullest extent possible:

(1) The policies, regulations, and public laws of this State shall be interpreted and administered in accordance with the policies set forth in this Article; and

(2) Any State agency shall include in every recommendation or report on proposals for legislation and actions involving expenditure of public moneys for projects and programs significantly affecting the quality of the environment of this State, a detailed statement by the responsible official setting forth the following:

a. The environmental impact of the proposed action;

b. Any significant adverse environmental effects which cannot be avoided should the proposal be implemented;

c. Mitigation measures proposed to minimize the impact;

d. Alternatives to the proposed action;

e. The relationship between the short-term uses of the environment involved in the proposed action and the maintenance and enhancement of long-term productivity; and

f. Any irreversible and irretrievable environmental changes which would be involved in the proposed action should it be implemented.

Prior to making any detailed statement, the responsible official shall consult with and obtain the comments of any agency which has either jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such detailed statement and such comments shall be made available to the Governor, to such agency or agencies as he may designate, and to the appropriate multi-county regional agency as certified by the Director of the Department of Administration, shall be placed in the public file of the agency and shall accompany the proposal through the existing agency review processes. A copy of such detailed statement shall be made available to the public and to counties, municipalities, institutions and individuals, upon request.

(3) The Governor, and any State agency charged with duties under this Article, may call upon any of the public institutions of higher education of this State for assistance in developing plans and procedures under this Article and in meeting the requirements of this Article, including without limitation any of the following units of the University of North Carolina: the Water Resources Research Institute, the Institute for Environmental Studies, the Triangle Universities Consortium on Air Pollution, the University Council on Marine Sciences, and the Institute of Government. (1971, c. 1203, s. 4.)

§ 113A-5. Review of agency actions involving major adverse changes or conflicts. — Whenever, in the judgment of the responsible State official, the information obtained in preparing the statement indicates that a major adverse change in the environment, or conflicts concerning alternative uses of available natural resources, would result from a specific program, project or action, and that an appropriate alternative cannot be developed, such information shall be presented to the Governor for review and final decision by him or by such agency as he may designate, in the exercise of the powers of the Governor. (1971, c. 1203, s. 5.)

§ 113A-6. Conformity of administrative procedures to State environmental policy. — All agencies of the State shall review their present statutory authority, administrative regulations, and current policies and procedures for the purpose of determining whether there are any deficiencies or inconsistencies therein which prohibit or hinder full compliance with the purposes and provisions of this Article and shall propose to the Governor not later than July 1, 1972, such measures as may be necessary to bring their authority, regulations, policies and procedures into conformity with the intent, purposes and procedures set forth in this Article. (1971, c. 1203, s. 6.)

§ 113A-7. Other statutory obligations of agencies. — Nothing in this Article shall in any way affect nor detract from specific statutory obligations of any State agency

(1) To comply with criteria or standards of environmental quality or to perform other statutory obligations imposed upon it,

(2) To coordinate or consult with any other State agency or federal agency, or

(3) To act, or refrain from acting contingent upon the recommendations or certification of any other State agency or federal agency. (1971, c. 1203, s. 7.)

§ 113A-8. Major development projects. — The governing bodies of all cities, counties, and towns acting individually, or collectively, are hereby authorized to require any special-purpose unit of government and private developer of a major development project to submit detailed statements, as defined in G.S. 113A-4(2), of the impact of such projects. (1971, c. 1203, s. 8.)

§ 113A-9. Definitions. — As used in this Article, unless the context indicates otherwise:

(1) The term "major development project" shall include but is not limited to shopping centers, subdivisions and other housing developments, and industrial and commercial projects, but shall not include any projects of less than two contiguous acres in extent.

(2) The term "special-purpose unit of government" includes any special district or public authority.

(3) The term "State agency" includes every department, agency, institution, public authority, board, commission, bureau, division, council, member of Council of State, or officer of the State government of the State of North Carolina, but does not include local governmental units or bodies such as cities, towns, other municipal corporations or political subdivisions of the State, county or city boards of education, other local special-purpose public districts, units or bodies of any kind, or private corporations created by act of the General Assembly, except in those instances where programs, projects and actions of local governmental units or bodies are subject to review, approval or licensing by State agencies in accordance with existing statutory authority, in which case local governmental units or bodies shall supply information which may

be required by such State agencies for preparation of any environmental statement required by this Article.

(4) The term responsible "State official," as used in this Article, shall mean the Director, Commissioner, Secretary, Administrator or Chairman of the State agency having primary statutory authority for specific programs, projects or actions subject to this Article, or his authorized representative. (1971, c. 1203, s. 9.)

§ 113A-10. Provisions supplemental. — The policies, obligations and provisions of this Article are supplementary to those set forth in existing authorizations of and statutory provisions applicable to State agencies and local governments. In those instances where a State agency is required to prepare an environmental statement, or comments thereon, under provisions of federal law, such statement or comments will meet the provisions of this Article. (1971, c. 1203, s. 10.)

§§ 113A-11 to 113A-20: Reserved for future codification purposes.

ARTICLE 2.

Interstate Environmental Compact.

§ 113A-21. Title. — This Article shall be known and cited as "The Interstate Environmental Compact Act of 1971." (1971, c. 805, s. 1.)

§ 113A-22. Purpose. — The General Assembly of North Carolina recognizes and declares:

(1) The concern for the purity and life-giving qualities of our environment is of primary interest to every citizen of North Carolina and to all Americans.

(2) The quality of our environment depends upon the management of the air, water, and land resources upon which our lives depend.

(3) The ultimate responsibility for the health, safety, and welfare of the citizens of North Carolina rests upon the State government.

(4) The environment of every state is affected with local, state, regional, and national interests since ecological systems cross state boundaries.

(5) The discharge of this responsibility of environmental protection can be enhanced by acting in concert and cooperation with other states and with the federal government. (1971, c. 805, s. 2.)

§ 113A-23. Compact provisions. — The Interstate Environmental Compact is hereby enacted into law and entered into with all other jurisdictions legally joining herein in the form substantially as follows:

Article 1. Findings, Purposes and Reservations of Power.

(1) Findings. — Signatory states hereby find and declare:

(a) The environment of every state is affected with local, state, regional, and national interests and its protection, under appropriate arrangements for intergovernmental cooperation, are public purposes of the respective signatories.

(b) Certain environmental pollution problems transcend state boundaries and thereby become common to adjacent states requiring cooperative efforts.

(c) The environment of each state is subject to the effective control of the signatories, and coordinated, cooperative or joint exercise of control measures is in their common interests.

(2) Purposes. — The purposes of the signatories in enacting this Compact are:

(a) To assist and participate in the national environment protection programs as set forth in federal legislation; to promote

intergovernmental cooperation for multi-state action relating to environmental protection through interstate agreements; and to encourage cooperative and coordinated environmental protection by the signatories and the federal government;

(b) To preserve and utilize the functions, powers, and duties of existing state agencies of government to the maximum extent possible consistent with the purposes of the Compact.

(3) Powers of the United States. — (a) Nothing contained in this Compact shall impair, affect or extend the constitutional authority of the United States. (b) The signatories hereby recognize the power and right of the Congress of the United States at any time by any statute expressly enacted for that purpose to revise the terms and conditions of its content.

(4) Powers of the States. — Nothing contained in this Compact shall impair or extend the constitutional authority of any signatory state, nor shall the police powers of any signatory state be affected.

Article 2. Short Title, Definitions, Purposes and Limitations.

(1) Short Title. — This Compact shall be known and may be cited as the Interstate Environmental Compact.

(2) Definitions. — For the purpose of this Compact and of any supplemental or concurring legislation enacted pursuant or in relation hereto, except as may be otherwise required by the context:

(a) "State" shall mean any one of the 50 states of the United States of America, the Commonwealth of Puerto Rico and the Territory of the Virgin Islands, but shall not include the District of Columbia.

(b) "Interstate environment pollution" shall mean any pollution of a stream or body of water crossing or marking a state boundary, interstate air quality control region designated by an appropriate federal agency or solid waste collection and disposal district or program involving the jurisdiction or territories of more than one state.

(c) "Government" shall mean the governments of the United States and the signatory states.

(d) "Federal government" shall mean the government of the United States of America and any appropriate department, instrumentality, agency, commission, bureau, division, branch or other unit thereof, as the case may be, but shall not include the District of Columbia.

(e) "Signator" shall mean any state which enters into this Compact and is a party thereto.

Article 3. Intergovernmental Cooperation.

(1) Agreements with the Federal Government and other Agencies. — Signatory states are hereby authorized jointly to participate in cooperative or joint undertakings for the protection of the interstate environment with the federal government or with any intergovernmental or interstate agencies.

Article 4. Supplementary Agreements, Jurisdiction and Enforcement.

(1) Signatories may enter into agreements for the purpose of controlling interstate environmental problems in accordance with applicable federal legislation and under terms and conditions as deemed appropriate by the agreeing states under paragraph (6) and paragraph (8) of this Article 4.

(2) Recognition of Existing Nonenvironmental Intergovernmental Arrangements. — The signatories agree that existing federal-state, interstate or intergovernmental arrangements which are not primarily directed to environmental protection purposes as defined herein are not affected by this Compact.

(3) Recognition of Existing Intergovernmental Agreements Directed to Environmental Objectives. — All existing interstate compacts directly relating to environmental protection are hereby expressly recognized and nothing in this Compact shall be construed to diminish or supersede the powers and functions of such existing intergovernmental agreements and the organizations created by them.

(4) Modification of Existing Commissions and Compacts. — Recognition herein of multi-state commissions and compacts shall not be construed to limit directly or indirectly the creation of additional multi-state organizations or interstate compacts, nor to prevent termination, modification, extension, or supplementation of such multi-state organizations and interstate compacts recognized herein by the federal government or states party thereto.

(5) Recognition of Future Multi-State Commissions and Interstate Compacts. — Nothing in this Compact shall be construed to prevent signatories from entering into multi-state organizations or other interstate compacts which do not conflict with their obligations under this Compact.

(6) Supplementary Agreements. — Any two or more signatories may enter into supplementary agreements for joint, coordinated or mutual environmental management activities relating to interstate pollution problems common to the territories of such states and for the establishment of common or joint regulation, management, services, agencies or facilities for such purposes or may designate an appropriate agency to act as their joint agency in regard thereto. No supplementary agreement shall be valid to the extent that it conflicts with the purposes of this Compact and the creation of a joint agency by supplementary agreement shall not affect the privileges, powers, responsibilities or duties under this Compact of signatories participating therein as embodied in this Compact.

(7) Execution of Supplementary Agreements and Effective Date. — The Governor is authorized to enter into supplementary agreements for the State and his official signature shall render the agreement immediately binding upon the State; provided that:

(a) The legislature of any signatory entering into such a supplementary agreement shall at any subsequent legislative session by concurrent resolution bring the supplementary agreement before it and by appropriate legislative action approve, reverse, modify, or condition the agreement of that state.

(b) Nothing in this agreement shall be construed to limit the right of Congress by act of law expressly enacted for that purpose to disapprove or condition such a supplementary agreement.

(8) Special Supplementary Agreements. — Signatories may enter into special supplementary agreements with the District of Columbia or foreign nations for the same purposes and with the same powers as under paragraph (6), Article 4, upon the condition that such nonsignatory party accept the general obligations of signatories under this Compact. Provided, that such special supplementary agreements shall become effective only after being consented to by the Congress.

(9) Jurisdiction of Signatories Reserved.—Nothing in this Compact or in any supplementary agreement thereunder shall be construed to restrict, relinquish or be in derogation of, any power or authority constitutionally possessed by any signatory within its jurisdiction.

(10) Complementary Legislation by Signatories. — Signatories may enact such additional legislation as may be deemed appropriate to enable its officers and governmental agencies to accomplish effectively the purposes of this Compact and supplementary agreements recognized or entered into under the terms of this Article.

(11) Legal Rights of Signatories. — Nothing in this Compact shall impair the exercise by any signatory of its legal rights or remedies established by the United States Constitution or any other laws of this nation.

Article 5. Construction, Amendment, and Effective Date.

(1) Construction. — It is the intent of the signatories that no provision of this Compact or supplementary agreement entered into hereunder shall be construed as invalidating any provision of law of any signatory and that nothing in this Compact shall be construed to modify or qualify the authority of any signatory to enact or enforce environmental protection legislation within its jurisdiction.

(2) Severability. — The provisions of this Compact or of agreements hereunder shall be severable and if any phrase, clause, sentence or provisions of this Compact, or such an agreement is declared to be contrary to the constitutionality of the remainder of this Compact or of any agreement and the applicability thereof to any participating jurisdiction, agency, person or circumstance shall not be affected thereby and shall remain in full force and effect as to the remaining participating jurisdictions and in full force and effect as to the signatory affected as to all severable matters. It is the intent of the signatories that the provisions of this Compact shall be reasonably and liberally construed in the context of its purposes.

(3) Amendments. — Amendments to this Compact may be initiated by legislative action of any signatory and become effective when concurred in by all signatories and approved by Congress.

(4) Effective Date. — This Compact shall become binding on a state when enacted by it into law and such state shall thereafter become a signatory and party hereto with any and all states legally joining herein. (1971, c. 805, s. 3.)

§§ 113A-24 to 113A-29: Reserved for future codification purposes.

ARTICLE 3.

Natural and Scenic Rivers System.

§ 113A-30. Short title. — This Article shall be known and may be cited as the "Natural and Scenic Rivers Act of 1971." (1971, c. 1167, s. 2.)

§ 113A-31. Declaration of policy. — The General Assembly finds that certain rivers of North Carolina possess outstanding natural, scenic, educational, geological, recreational, historic, fish and wildlife, scientific and cultural values of great present and future benefit to the people. The General Assembly further finds as policy the necessity for a rational balance between the conduct of man and the preservation of the natural beauty along the many rivers of the State. This policy includes retaining the natural and scenic conditions in some of the State's valuable rivers by maintaining them in a free-flowing state and to protect their water quality and adjacent lands by retaining these natural and scenic conditions. It is further declared that the preservation of certain rivers or segments of rivers in their natural and scenic condition constitutes a beneficial public purpose. (1971, c. 1167, s. 2.)

§ 113A-32. Declaration of purpose. — The purpose of this Article is to implement the policy as set out in G.S. 113A-31 by instituting a North Carolina natural and scenic rivers system, and by prescribing methods for inclusion of components to the system from time to time. (1971, c. 1167, s. 2.)

§ 113A-33. Definitions. — As used in this Article, unless the context requires otherwise:

(1) "Department" means the Department of Natural and Economic Resources.

(2) "Free-flowing," as applied to any river or section of a river, means existing or flowing in natural condition without substantial impoundment, diversion, straightening, rip-rapping, or other modification of the waterway. The existence of low dams, diversion works, and other minor structures at the time any river is proposed for inclusion in the North Carolina natural and scenic rivers system shall not automatically bar its consideration for such inclusion: Provided, that this shall not be construed to authorize, intend, or encourage future construction of such structures within components of the system.

(3) "River" means a flowing body of water or estuary or a section, portion, or tributary thereof, including rivers, streams, creeks, runs, kills, rills, and small lakes.

(4) "Road" means public or private highway, hard-surface road, dirt road, or railroad.

(5) "Scenic easement" means a perpetual easement in land which (i) is held for the benefit of the people of North Carolina, (ii) is specifically enforceable by its holder or beneficiary, and (iii) limits or obligates the holder of the servient estate, his heirs, and assigns with respect to their use and management of the land and activities conducted thereon. The object of such limitations and obligations is the maintenance or enhancement of the natural beauty of the land in question or of the areas affected by it. (1971, c. 1167, s. 2; 1973, c. 1262, s. 86.)

Editor's Note. — The 1973 amendment substituted "Department of Natural and Economic Resources" for "Department of Conservation and Development" in subdivision (1).

§ 113A-34. Types of scenic rivers. — The following types of rivers are eligible for inclusion in the North Carolina natural and scenic rivers system:

Class I. Natural river areas. Those free-flowing rivers or segments of rivers and adjacent lands existing in a natural condition. Those rivers or segments of rivers that are free of man-made impoundments and generally inaccessible except by trail, with the lands within the boundaries essentially primitive and the waters essentially unpolluted. These represent vestiges of primitive America.

Class II. Scenic river areas. Those rivers or segments of rivers that are largely free of impoundments, with the lands within the boundaries largely primitive and largely undeveloped, but accessible in places by roads. (1971, c. 1167, s. 2.)

§ 113A-35. Criteria for system. — For the inclusion of any river or segment of river in the natural and scenic rivers system, the following criteria must be present:

(1) River segment length — must be no less than one mile.

(2) Boundaries — of the system shall be the visual horizon or such distance from each shoreline as may be determined to be necessary by the Secretary, but shall not be less than 20 feet. Provided, that this shall not be construed to authorize the Secretary to acquire, except by donation or gift, more than 320 acres of land per mile for inclusion within the boundaries.

(3) Water quality — shall not be less than that required for Class "C" waters as established by the North Carolina Environmental Management Commission.

(4) Water flow — shall be sufficient to assure a continuous flow and shall not be subjected to withdrawal or regulation to the extent of substantially altering the natural ecology of the stream.

(5) Public access — shall be limited, but may be permitted to the extent deemed proper by the Secretary, and in keeping with the property interest acquired by the Department and the purpose of this Article. (1971, c. 1167, s. 2; 1973, c. 1262, ss. 23, 86.)

Editor's Note. — The 1973 amendment substituted "Secretary" for "Director" in subdivisions (2) and (5) and "Environmental Management Commission" for "Board of Water and Air Resources" in subdivision (3).

§ 113A-35.1. Components of system. — That segment of the New River which extends from the confluence of the north and south forks of the New River in Ashe County through Ashe and Alleghany Counties to the Virginia line shall be a scenic river area and shall be included in the North Carolina Natural and Scenic Rivers System. (1973, c. 879.)

§ 113A-36. Administrative agency; federal grants; additions to the system; regulations. — (a) The Department of Natural and Economic Resources is the agency of the State of North Carolina with the duties and responsibilities to administer and control the North Carolina natural and scenic rivers system.

(b) The Department shall be the agency of the State with the authority to accept federal grants of assistance in planning, developing (which would include the acquisition of land or an interest in land), and administrating the natural and scenic rivers system.

(c) The Secretary of the Department shall study and from time to time submit to the Governor and to the General Assembly proposals for the additions to the system of rivers and segments of rivers which, in his judgment, fall within one or more of the categories set out in G.S. 113A-34. Each proposal shall specify the category of the proposed addition and shall be accompanied by a detailed report of the facts which, in the Secretary's judgment, makes the area a worthy addition to the system.

Before submitting any proposal to the Governor or the General Assembly for the addition to the system of a river or segment of a river, the Secretary or his authorized representative, shall hold a public hearing in the county or counties where said river or segment of river is situated. Notice of such public hearing shall be given by publishing a notice once each week for two consecutive weeks in a newspaper having general circulation in the county where said hearing is to be held, the second of said notices appearing not less than 10 days before said hearing. Any person attending said hearing shall be given an opportunity to be heard. Notwithstanding the provisions of the foregoing, no public hearing shall be required with respect to a river bounded solely by the property of one owner, who consents in writing to the addition of such river to the system.

The Department shall also conduct an investigation on the feasibility of the inclusion of a river or a segment of river within the system and file a written report with the Governor when submitting a proposal.

The Department shall also, before submitting such a proposal to the Governor or the General Assembly, notify in writing the owner, lessee, or tenant of any lands adjoining said river or segment of river of its intention to make such proposal. In the event the Department, after due diligence, is unable to determine the owner or lessee of any such land, the Department may publish a notice for four successive weeks in a newspaper having general circulation in the county where the land is situated of its intention to make a proposal to the Governor or General Assembly for the addition of a river or segment of river to the system.

(d) The Department of Natural and Economic Resources may establish reasonable regulations for the purpose of carrying out the provisions of this Article. (1971, c. 1167, s. 2; 1973, c. 911; c. 1262, ss. 28, 86.)

Editor's Note. — The first 1973 amendment added the second, third and fourth paragraphs of subsection (c).

The second 1973 amendment substituted "Department of Natural and Economic Resources" for "Department of Conservation and Development" in subsection (a) and for "Board of Conservation and Development" in subsection (d) and substituted "Secretary" for "Director" and "Secretary's" for "Director's" in subsection (c).

§ 113A-37. Raising the status of an area. — Whenever in the judgment of the Secretary of the Department a scenic river segment has been sufficiently restored and enhanced in its natural scenic and recreational qualities, such segment may be reclassified with the approval of the Department, to a natural river area status and thereafter administered accordingly. (1971, c. 1167, s. 2; 1973, c. 1262, ss. 28, 86.)

Editor's Note. — The 1973 amendment substituted "Secretary" for "Director" near the beginning of the section and "Department" for "Board" near the end of the section.

§ 113A-38. Land acquisition. — (a) The Department of Administration is authorized to acquire for the Department of Natural and Economic Resources, within the boundaries of a river or segment of river as set out in G.S. 113A-35 on behalf of the State of North Carolina, lands in fee title or a lesser interest in land, preferably "scenic easements." Acquisition of land or interest therein may be by donation, purchase with donated or appropriated funds, exchange or otherwise.

(b) The Department of Administration in acquiring real property or a property interest therein as set out in this Article shall have and may exercise the power of eminent domain in accordance with the provisions of Article 2, Chapter 40, of the General Statutes, as amended. (1971, c. 1167, s. 2; 1973, c. 1262, s. 86.)

Editor's Note. — The 1973 amendment substituted "Department of Natural and Economic Resources" for "Department of Conservation and Development" in subsection (a).

§ 113A-39. Claim and allowance of charitable deduction for contribution or gift of easement. — The contribution or donation of a "scenic easement," right-of-way or any other easement or interest in land to the State of North Carolina, as provided in this Article, shall be deemed a contribution to the State of North Carolina within the provisions of G.S. 105-130.9 and 105-147(16). The value of the contribution or donation shall be the fair market value of the easement or other interest in land when the contribution or donation is made. (1971, c. 1167, s. 2.)

§ 113A-40. Component as part of State park, wildlife refuge, etc. — Any component of the State natural and scenic rivers system that is or shall become a part of any State park, wildlife refuge, or state-owned area shall be subject to the provisions of this Article and the Articles under which the other areas may be administered, and in the case of conflict between the provisions of these Articles the more restrictive provisions shall apply. (1971, c. 1167, s. 2.)

§ 113A-41. Component as part of national wild and scenic river system. — Nothing in this Article shall preclude a river or segment of a river from becoming part of the national wild and scenic river system. The Secretary of the Department is directed to encourage and assist any federal studies for the inclusion of North Carolina rivers in the national system. The Secretary may enter into cooperative agreements for joint federal-state administration of a North Carolina river or segment of river: Provided, that such agreements

relating to water and land use are not less restrictive than the requirements of this Article. (1971, c. 1167, s. 2; 1973, c. 1262, s. 86.)

Editor's Note. — The 1973 amendment substituted "Secretary" for "Director" in two places.

§ 113A-42. Violations. — (a) Civil Action. — Whoever violates, fails, neglects or refuses to obey any provision of this Article or regulation or order of the Secretary of Natural and Economic Resources may be compelled to comply with or obey the same by injunction, mandamus, or other appropriate remedy.

(b) Penalties. — Whoever violates, fails, neglects or refuses to obey any provision of this Article or regulation or order of the Secretary of Natural and Economic Resources is guilty of a misdemeanor and may be punished by a fine of not more than fifty dollars ($50.00) for each violation, and each day such person shall fail to comply, where feasible, after having been officially notified by the Department shall constitute a separate offense subject to the foregoing penalty. (1971, c. 1167, s. 2; 1973, c. 1262, s. 86.)

Editor's Note. — The 1973 amendment substituted "Secretary of Natural and Economic Resources" for "Director of the Department of Conservation and Development" in subsections (a) and (b).

§ 113A-43. Authorization of advances. — The Department of Administration is hereby authorized to advance from land-purchase appropriations necessary amounts for the purchase of land in those cases where reimbursement will be later effected by the Bureau of Outdoor Recreation of the United States Department of the Interior. (1971, c. 1167, s. 2.)

§§ 113A-44 to 113A-49: Reserved for future codification purposes.

ARTICLE 4.

Sedimentation Pollution Control Act of 1973.

§ 113A-50. Short title. — This Article shall be known as and may be cited as the "Sedimentation Pollution Control Act of 1973." (1973, c. 392, s. 1.)

Editor's Note. — Session Laws 1973, c. 392, s. 18, contains a severability clause.

§ 113A-51. Preamble. — The sedimentation of streams, lakes and other waters of this State constitutes a major pollution problem. Sedimentation occurs from the erosion or depositing of soil and other materials into the waters, principally from construction sites and road maintenance. The continued development of this State will result in an intensification of pollution through sedimentation unless timely and appropriate action is taken. Control of erosion and sedimentation is deemed vital to the public interest and necessary to the public health and welfare, and expenditures of funds for erosion and sedimentation control programs shall be deemed for a public purpose. It is the purpose of this Article to provide for the creation, administration, and enforcement of a program and for the adoption of minimal mandatory standards which will permit development of this State to continue with the least detrimental effects from pollution by sedimentation. (1973, c. 392, s. 2.)

§ 113A-52. Definitions. — As used in this Article, unless the context otherwise requires:

(1) Repealed by Session Laws 1973, c. 1417, s. 1.
(2) "Commission" means the North Carolina Sedimentation Control Commission.
(3) "Department" means the North Carolina Department of Natural and Economic Resources.
(4) "District" means any Soil and Water Conservation District created pursuant to Chapter 139, North Carolina General Statutes.
(5) "Erosion" means the wearing away of land surface by the action of wind, water, gravity, or any combination thereof.
(6) "Land-disturbing activity" means any use of the land by any person in residential, industrial, educational, institutional or commercial development, highway and road construction and maintenance that results in a change in the natural cover or topography and that may cause or contribute to sedimentation. This Article shall not apply to the following land-disturbing activities:
   a. Those undertaken on agricultural land for the production of plants and animals useful to man, including but not limited to: forages and sod crops, grains and feed crops, tobacco, cotton, and peanuts; dairy animals and dairy products; poultry and poultry products; livestock, including beef cattle, sheep, swine, horses, ponies, mules or goats, including the breeding and grazing of any or all such animals; bees and apiary products; fur animals; and
   b. Those undertaken on forestland for the production and harvesting of timber and timber products.
   c. Activities undertaken by persons as defined in G.S. 113A-52(8) who are otherwise regulated by the provisions of G.S. 74-46 through G.S. 74-68, the Mining Act of 1971.
(7) "Local government" means any county, incorporated village, town, or city, or any combination of counties, incorporated villages, towns, and cities, acting through a joint program pursuant to the provisions of this Article.
(8) "Person" means any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, interstate body, or other legal entity.
(9) "Secretary" means the Secretary of the Department of Natural and Economic Resources.
(10) "Sediment" means solid particulate matter, both mineral and organic, that has been or is being transported by water, air, gravity, or ice from its site of origin.
(11) "Working days" means days exclusive of Saturday and Sunday during which weather conditions permit land-disturbing activity to be undertaken. (1973, c. 392, s. 3; c. 1417, s. 1.)

Editor's Note. — The 1973 amendment repealed subdivision (1), defining "angle of repose for saturated soil conditions," substituted "any person" for "man," inserted "educational, institutional" and deleted "and" preceding "highway" in the first sentence of subdivision (6), substituted "or is being transported by water, air, gravity, or ice" for "moved" in subdivision (10) and deleted "and is in suspension in water" at the end of subdivision (10).

§ 113A-53: Repealed by Session Laws 1973, c. 1262, s. 41.

Cross References. — For this section as amended by Session Laws 1973, c. 1417, s. 2, see the note to § 143B-299. As to creation and organization of the Sedimentation Control Commission, see §§ 143B-298, 143B-299.

§ 113A-54. Powers and duties of the Commission. — (a) The Commission shall, in cooperation with the Secretary of the Department of Transportation and Highway Safety and other appropriate State and federal agencies, develop, promulgate, publicize, and administer a comprehensive State erosion and sedimentation control program.

(b) To implement this program the Commission shall develop and adopt on or before July 1, 1974, rules and regulations for the control of erosion and sedimentation resulting from land-disturbing activities, which rules and regulations may be revised from time to time as may be necessary. Prior to the adoption or revision by the Commission of any rules or regulations authorized by this section, it shall conduct one or more public hearings with respect to such proposed action in accordance with the following procedures:

(1) Notice of any hearing shall be given not less than 60 days before the date of the hearing and shall state the date, time, and place of hearing, the subject of the hearing, and the action that the Commission proposes to take. The notice shall either include details of the proposed action, or where the proposed action is too lengthy for publication, as hereinafter provided for, the notice shall specify that copies of the detailed proposed action can be obtained upon request from the Commission.

(2) Any such notice shall be published at least once a week for three consecutive weeks in a newspaper of general circulation in the eastern, western and central regions of the State.

(3) Any person desiring to be heard at any public hearing shall give notice thereof in writing to the Commission on or before the date set for the hearing. The Commission is authorized to set reasonable time limits for the oral presentation of views by any one person at any public hearing. The Commission shall permit anyone who so desires to file a written argument or other statement with it in relation to any proposed action at any time within 30 days following the conclusion of any public hearing or within any additional time as it may allow by notice given as prescribed in this section.

When the Commission has completed hearings and considered the submitted evidence and arguments with respect to any proposed action pursuant to this section, it shall adopt its final action with respect thereto and shall publish such final action as part of the official regulations of the Department.

(c) The rules and regulations adopted pursuant to G.S. 113A-54(b) for carrying out the erosion and sedimentation control program shall:

(1) Be based upon relevant physical and developmental information concerning the watershed and drainage basins of the State, including, but not limited to, data relating to land use, soils, hydrology, geology, grading, ground cover, size of land area being disturbed, proximate water bodies and their characteristics, transportation, and public facilities and services;

(2) Include such survey of lands and waters as may be deemed appropriate by the Commission or required by any applicable laws to identify those areas, including multijurisdictional and watershed areas, with critical erosion and sedimentation problems; and

(3) Contain conservation standards for various types of soils and land uses, which standards shall include criteria and alternative techniques and methods for the control of erosion and sediment resulting from land-disturbing activities.

(d) In implementing the erosion and sedimentation control program, the Commission is authorized and directed to:

(1) Assist and encourage local governments in developing erosion and sediment control programs and as part of such assistance to develop

a model local erosion control ordinance, and approve, approve as modified, or disapprove local plans submitted to it pursuant to G.S. 113A-60;

(2) Assist and encourage other State agencies in developing erosion and sedimentation control programs to be administered in their jurisdictions, and to approve, approve as modified, or disapprove such programs submitted pursuant to G.S. 113A-56 and from time to time review such programs for compliance with regulations issued by the Commission and for adequate enforcement; and to require at its discretion, submission of erosion control plans by those responsible for initiating land-disturbing activities for approval prior to commencement of said activities;

(3) Develop recommended methods of control of sedimentation and prepare and make available for distribution publications and other materials dealing with sedimentation control techniques appropriate for use by persons engaged in land-disturbing activities, general educational materials on erosion and sedimentation control, and instructional materials for persons involved in the enforcement of erosion control regulations, ordinances, and plans.

(e) To assist it in developing the erosion and sedimentation control program required by this Article, the Commission is authorized to appoint an advisory committee consisting of technical experts in the fields of water resources, soil science, engineering, and landscape architecture.

(f) All rules and regulations of the Commission promulgated pursuant to this Article shall be incorporated either in the Secretary's official regulations or his rules of procedure. All such rules and regulations shall upon adoption be printed and a duly certified copy thereof shall be filed with the Secretary of State and with the several clerks of court of the counties of the State as required by Chapter 150[A] of the General Statutes. Copies shall at all times be kept at the office of the Secretary in sufficient numbers to satisfy all reasonable requests therefor. The Secretary shall codify the regulations and rules promulgated under this Article and shall from time to time revise and bring up to date such codifications. Except for those activities enumerated in G.S. 113A-56 over which the Commission has exclusive jurisdiction, the Commission shall in no event require approval prior to the commencement of land-disturbing activity. (1973, c. 392, s. 5; c. 1331, s. 3; c. 1417, s. 6.)

Editor's Note. — The 1973 amendment added the last sentence of subsection (f).

Pursuant to Session Laws 1973, c. 1331, s. 3, effective July 1, 1975, the reference to chapter 150[A] has been substituted for a reference to §§ 143-195 through 143-198.1 in subsection (f).

§ 113A-55. Authority of the Secretary. — The sedimentation control program developed by the Commission shall be administered by the Secretary under the direction of the Commission. To this end the Secretary is authorized and directed to employ, with the approval of the Commission, the necessary clerical, technical, and administrative personnel, and to assign tasks to the various divisions of the Department for the purpose of implementing this Article. The Secretary is authorized to bring enforcement actions pursuant to G.S. 113A-64 and G.S. 113A-65. (1973, c. 392, s. 6; c. 1417, s. 3.)

Editor's Note. — The 1973 amendment deleted "as chairman of the Commission" following "Secretary" in the last sentence.

§ 113A-56. Jurisdiction of the Commission. — (a) The Commission shall have jurisdiction, to the exclusion of local governments, for the purpose of promulgating regulations concerning land-disturbing activities that are:

(1) Conducted by the State;
(2) Conducted by the United States;
(3) Conducted by persons having the power of eminent domain;
(4) Conducted by local governments;
(5) Licensed by the State or the United States; or
(6) Funded in whole or in part by the State or the United States.

(b) The Commission may delegate the jurisdiction conferred by G.S. 113A-56(a), in whole or in part, to any other State agency that has submitted an erosion control program to be administered by it, if such program has been approved by the Commission as being in conformity with the general State program.

(c) The Commission shall have concurrent jurisdiction with local governments over all other land-disturbing activities. (1973, c. 392, s. 7; c. 1417, s. 4.)

Editor's Note. — The 1973 amendment inserted "the State or" in subdivision (5), and substituted "Funded" for "Financed" in subdivision (6) of subsection (a).

§ 113A-57. Mandatory standards for land-disturbing activity. — No land-disturbing activity subject to this Article shall be undertaken except in accordance with the following mandatory requirements:

(1) No land-disturbing activity shall be permitted in proximity to a lake or natural watercourse unless a buffer zone is provided along the margin of the watercourse of sufficient width to confine visible siltation within the twenty-five percent (25%) of the buffer zone nearer the land-disturbing activity, provided, that this subdivision (1) shall not apply to a land-disturbing activity in connection with the construction of facilities to be located on, over, or under a lake or natural watercourse.
(2) The angle for graded slopes and fills shall be no greater than the angle which can be retained by vegetative cover or other adequate erosion-control devices or structures. In any event, slopes left exposed will, within 30 working days of completion of any phase of grading, be planted or otherwise provided with ground cover, devices, or structures sufficient to restrain erosion.
(3) Whenever land-disturbing activity is undertaken on a tract comprising more than one acre, if more than one contiguous acre is uncovered, a ground cover sufficient to restrain erosion must be planted or otherwise provided within 30 working days on that portion of the tract upon which further active construction is not being undertaken, provided, that this subdivision (3) shall not apply to cleared land forming the basin of a reservoir later to be inundated. (1973, c. 392, s. 8; c. 1417, s. 5.)

Editor's Note. — The 1973 amendment rewrote the first sentence of subdivision (2) and substituted "slopes" for "soil," deleted "a" preceding "ground cover" and inserted "devices, or structures" in the second sentence of subdivision (2).

§ 113A-58. Enforcement authority of the Commission. — In implementing the provisions of this Article the Commission is authorized and directed to:

(1) Inspect or cause to be inspected the sites of land-disturbing activities to determine whether applicable laws, regulations or erosion control plans are being complied with;

(2) Make requests, or delegate to the Secretary authority to make requests, of the Attorney General or solicitors for prosecutions of violations of this Article. (1973, c. 392, s. 9.)

§ 113A-59. Educational activities. — The Commission in conjunction with the soil and water conservation districts, the North Carolina Agricultural Extension Service, and other appropriate State and federal agencies shall conduct educational programs in erosion and sedimentation control, such programs to be directed towards State and local governmental officials, persons engaged in land-disturbing activities, and interested citizen groups. (1973, c. 392, s. 10.)

§ 113A-60. Local erosion control programs. — (a) Any local government may submit to the Commission for its approval an erosion and sediment control program for its jurisdiction, and to this end local governments are authorized to adopt ordinances, rules and regulations necessary to establish and enforce such control programs, and they are authorized to create or designate agencies or subdivisions of local government to administer and enforce the programs. Two or more units of local government are authorized to establish a joint program and to enter into such agreements as are necessary for the proper administration and enforcement of such program. The resolutions establishing any joint program must be duly recorded in the minutes of the governing body of each unit of local government participating in the program, and a certified copy of each resolution must be filed with the Commission.

(b) The Commission shall review each program submitted and within 90 days of receipt thereof shall notify the local government submitting the program that it has been approved, approved with modifications, or disapproved. The Commission shall only approve a program upon determining that its standards equal or exceed those of the model local erosion control ordinance developed in accordance with G.S. 113A-54(d)(1).

(c) If the Commission determines that any local government is failing to administer or enforce an approved erosion and sediment control program, it shall notify the local government in writing and shall specify the deficiencies of administration and enforcement. If the local government has not taken corrective action within 30 days of receipt of notification from the Commission, the Commission shall assume enforcement of the program until such time as the local government indicates its willingness and ability to resume administration and enforcement of the program. (1973, c. 392, s. 11.)

§ 113A-61. Approval of plans. — (a) Each local government's erosion and sediment control program shall require that for those land-disturbing activities requiring prior approval of an erosion control plan, such plan shall be submitted to the appropriate soil and water conservation district at the same time it is submitted to the local government for approval. The soil and water conservation district or districts, within 20 days after receipt of the proposed plan, or within such additional time as may be prescribed by the local government, shall review the plan and submit its comments and recommendations to the local government. Failure of the soil and water conservation district to submit its comments and recommendations within 20 days or within the prescribed additional time shall not delay final action on the proposed plan by the local government.

(b) Local governments shall review each erosion control plan submitted to them and within 30 days of receipt thereof shall notify the person submitting the plan that it has been approved, approved with modifications, or disapproved. A local government shall only approve a plan upon determining that it complies with all applicable State and local regulations for erosion and sediment control.

(c) The disapproval or modification of any proposed erosion control plan by a local government shall entitle the person submitting the plan to a public hearing if such person submits written demand for a hearing within 15 days

after receipt of written notice of the disapproval or modification. The hearings shall be conducted pursuant to procedures adopted by the local government. Judicial review of the final action of the local government on the proposed plan may be had in the superior court of the county in which the local government is situated.

(d) With respect to approved plans for erosion control in connection with land-disturbing activities, the approving authority, either the Commission or a local government, shall provide for periodic inspections of the land-disturbing activity to insure compliance with the approved plan, and to determine whether the measures required in the plan are effective in controlling erosion and sediment resulting from the land-disturbing activities. Notice of such right of inspection shall be included in the certificate of approval for the plan. If the approving authority determines that the person engaged in the land-disturbing activities has failed to comply with the plan, the authority shall immediately serve upon that person by registered mail a notice to comply. The notice shall set forth the measures needed to come into compliance with the plan and shall state the time within which such measures must be completed. If the person engaged in the land-disturbing activities fails to comply within the time specified, he shall be deemed in violation of this Article. (1973, c. 392, s. 12.)

§ 113A-62. Cooperation with the United States. — The Commission is authorized to cooperate and enter into agreements with any agency of the United States government in connection with plans for erosion control with respect to land-disturbing activities on lands that are under the jurisdiction of such agency. (1973, c. 392, s. 13.)

§ 113A-63. Financial and other assistance. — The Commission and local governments are authorized to receive from federal, State, and other public and private sources financial, technical, and other assistance for use in accomplishing the purposes of this Article. (1973, c. 392, s. 14.)

§ 113A-64. Penalties. — (a) Civil Penalties. — (1) Any person who violates any of the provisions of this Article or any ordinance, rule, regulation, or order adopted or issued pursuant to this Article by the Commission or by a local government, or who initiates or continues a land-disturbing activity for which an erosion control plan is required except in accordance with the terms, conditions, and provisions of an approved plan, shall be subject to a civil penalty of not more than one hundred dollars ($100.00). No penalty shall be assessed until the person alleged to be in violation has been notified of the violation. Each day of a continuing violation shall constitute a separate violation under G.S. 113A-64(a)(1).

(2) The Secretary, for violations under the Commission's jurisdiction, or the governing body of any local government having jurisdiction, shall determine the amount of the civil penalty to be assessed under G.S. 113A-64(a) and shall make written demand for payment upon the person responsible for the violation, and shall set forth in detail the violation for which the penalty has been invoked. If payment is not received or equitable settlement reached within 60 days after demand for payment is made, the Secretary shall refer the matter to the Attorney General for the institution of a civil action in the name of the State in the superior court of the county in which the violation is alleged to have occurred to recover the amount of the penalty, and local governments shall refer such matters to their respective attorneys for the institution of a civil action in the name of the local government in the appropriate division of the General Court of Justice of the county in which the violation is alleged to have occurred for recovery of the penalty. Any

sums recovered shall be used to carry out the purposes and requirements of this Article.

(b) Criminal Penalties. — Any person who knowingly or willfully violates any provision of this Article or any ordinance, rule, regulation, or order duly adopted or issued by the Commission or a local government, or who knowingly or willfully initiates or continues a land-disturbing activity for which an erosion control plan is required, except in accordance with the terms, conditions, and provisions of an approved plan, shall be guilty of a misdemeanor punishable by imprisonment not to exceed 90 days, or by a fine not to exceed five thousand dollars ($5,000), or by both, in the discretion of the court. (1973, c. 392, s. 15.)

§ 113A-65. Injunctive relief. — (a) Violation of State Program. — Whenever the Secretary has reasonable cause to believe that any person is violating or is threatening to violate the requirements of this Article he may, either before or after the institution of any other action or proceeding authorized by this Article, institute a civil action for injunctive relief to restrain the violation or threatened violation. The action shall be brought in the superior court of the county in which the violation or threatened violation is occurring or about to occur, and shall be in the name of the State upon the relation of the Secretary.

(b) Violation of Local Program. — Whenever the governing body of a local government having jurisdiction has reasonable cause to believe that any person is violating or is threatening to violate any ordinance, rule, regulation, or order adopted or issued by the local government pursuant to this Article, or any term, condition or provision of an erosion control plan over which it has jurisdiction, may, either before or after the institution of any other action or proceeding authorized by this Article, institute a civil action in the name of the local government for injunctive relief to restrain the violation or threatened violation. The action shall be brought in the superior court of the county in which the violation is occurring or is threatened.

(c) Upon determination by a court that an alleged violation is occurring or is threatened, it shall enter such orders or judgments as are necessary to abate the violation or to prevent the threatened violation. The institution of an action for injunctive relief under subsections (a) or (b) of this section shall not relieve any party to such proceeding from any civil or criminal penalty prescribed for violations of this Article. (1973, c. 392, s. 16.)

§ 113A-66. Civil relief. — (a) Any person injured by a violation of this Article or any ordinance, rule, regulation, or order duly adopted by the Secretary or a local government, or by the initiation or continuation of a land-disturbing activity for which an erosion control plan is required other than in accordance with the terms, conditions, and provisions of an approved plan, may bring a civil action against the person alleged to be in violation (including the State and any local government). The action may seek:

(1) Injunctive relief;
(2) An order enforcing the law, rule, regulation, ordinance, order or erosion control plan violated; or
(3) Damages caused by the violation; or
(4) Both damages and injunctive relief; or
(5) Both damages and an enforcement order.

If the amount of actual damages as found by the court or jury in suits brought under this subsection is five hundred dollars ($500.00) or less, the plaintiff shall be awarded double the amount of actual damages; if the amount of actual damages as found by the court or jury is greater than five hundred dollars ($500.00), the plaintiff shall receive damages in the amount so found.

(b) Civil actions under this section shall be brought in the superior court of the county in which the alleged violations occurred.

(c) The court, in issuing any final order in any action brought pursuant to this section may award costs of litigation (including reasonable attorney and expert-witness fees) to any party, whenever it determines that such an award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security, the amount of such bond or security to be determined by the court.

(d) Nothing in this section shall restrict any right which any person (or class of persons) may have under any statute or common law to seek injunctive or other relief. (1973, c. 392, s. 17.)

§§ 113A-67 to 113A-71: Reserved for future codification purposes.

ARTICLE 5.

North Carolina Appalachian Trails System Act.

§ 113A-72. Short title. — This Article may be cited as the North Carolina Appalachian Trails System Act. (1973, c. 545, s. 1.)

§ 113A-73. Policy and purpose. — (a) In order to provide for the ever-increasing outdoor recreation needs of an expanded population and in order to promote public access to, travel within, and enjoyment and appreciation of the open-air, outdoor areas of the State, the Appalachian Trail should be protected in North Carolina as a segment of the National Scenic Trails System.

(b) The purpose of this Article is to provide the means for attaining these objectives by instituting a North Carolina Appalachian Trail System, designating the Appalachian Trail lying or located in the North Carolina Counties of Avery, Mitchell, Yancey, Madison, Haywood, Swain, Graham, Macon, and Clay, as defined in the Federal Register of the National Trails Act as the basic component of that System, and by prescribing the methods by which, and standards according to which, additional connecting trails may be added to the System. (1973, c. 545, s. 2.)

§ 113A-74. Appalachian Trails System; connecting or side trails; coordination with the National Trails System Act. — Connecting or side trails may be established, designated and marked as components of the Appalachian Trail System by the Department of Natural and Economic Resources in consultation with the federal agencies charged with the responsibility for the administration and management of the Appalachian Trail in North Carolina. Criteria and standards of establishment will coincide with those set forth in the National Trails System Act (PL 90-543). (1973, c. 545, s. 3.)

§ 113A-75. Assistance under this Article with the National Trails System Act (PL 90-543). — (a) The Department of Administration in cooperation with other appropriate State departments shall consult with the federal agencies charged with the administration of the Appalachian Trail in North Carolina and develop a mutually agreeable plan for the orderly and coordinated acquisition of Appalachian Trail right-of-way and the associated tracts, as needed, to provide a suitable environment for the Appalachian Trail in North Carolina.

(b) The Department of Natural and Economic Resources and the federal agencies charged with the responsibility of the administration of the Appalachian Trail in North Carolina shall give due consideration to the conservation of the environment of the Appalachian Trail and, in accordance with the National Trails System Act, may obtain advice and assistance from local governments, Carolina Mountain Club, Nantahala Hiking Club, Piedmont Appalachian Trail Hikers, Appalachian Trail Conference, other interested organizations and individuals, landowners and land users concerned.

(c) The North Carolina State Highway Commission shall cooperate and assist in carrying out the purposes of this Article and the National Trails System Act

where their highway projects cross or may be adjacent to any component of the Appalachian Trail System.

(d) Lands acquired by the State of North Carolina within the 200-feet right-of-way of the Appalachian Trail and within the exterior boundaries of the Pisgah or Nantahala National Forests, will be conveyed to the United States Forest Service as the federal agency charged with the responsibility for the administration and management of the Appalachian Trail within these specific areas.

(e) Lands acquired by the State of North Carolina outside of the boundaries of the Appalachian Trail right-of-way will be administered by the appropriate State department in such a manner as to preserve and enhance the environment of the Appalachian Trail.

(f) In consultation with the Department of Natural and Economic Resources, the federal agency charged with the responsibility of the administration of the Appalachian Trail in North Carolina shall establish use regulations in accordance with the National Trails System Act.

(g) The use of motor vehicles on the trails of the North Carolina Appalachian Trail System may be authorized when such use is necessary to meet emergencies or to enable adjacent landowners to have reasonable access to their lands and timber rights provided that the granting of this access is in accordance with limitations and conditions of such use set forth in the National Trails System Act. (1973, c. 545, s. 4.)

§ 113A-76. Acquisition of rights-of-way and lands; manner of acquiring. — The State of North Carolina may use lands for trail purposes within the boundaries of areas under its administration that are included in the rights-of-way selected for the Appalachian Trail System. The Department of Administration may acquire lands or easements by donation or purchase with funds donated or appropriated for such purpose. (1973, c. 545, s. 5.)

§ 113A-77. Expenditures authorized. — The Department of Natural and Economic Resources is authorized to spend any federal, State, local or private funds available for this purpose to the Department for acquisition and development of the Appalachian Trail System. (1973, c. 545, s. 6.)

§§ 113A-78 to 113A-82: Reserved for future codification purposes.

ARTICLE 6.

North Carolina Trails System.

§ 113A-83. Short title. — This Article shall be known and may be cited as the "North Carolina Trails System Act." (1973, c. 670, s. 1.)

Editor's Note. — Session Laws 1973, c. 670, s. 2, contains a severability clause.

§ 113A-84. Declaration of policy and purpose. — (a) In order to provide for the ever-increasing outdoor recreation needs of an expanded population and in order to promote public access to, travel within, and enjoyment and appreciation of the outdoor, natural and remote areas of the State, trails should be established in natural, scenic areas of the State, and in and near urban areas.

(b) The purpose of this Article is to provide the means for attaining these objectives by instituting a State system of scenic and recreation trails, and by prescribing the methods by which, and standards according to which, components may be added to the system. (1973, c. 670, s. 1.)

§ 113A-85. Definitions. — Except as otherwise required by context, the following terms when used in this Article shall be construed respectively to mean:

(1) "Department" means the North Carolina Department of Natural and Economic Resources.

(2) "Political subdivision" means any county, any incorporated city or town, or other political subdivision.

(3) "Scenic easement" means a perpetual easement in land which

a. Is held for the benefit of the people of North Carolina,

b. Is specifically enforceable by its holder or beneficiary, and

c. Limits or obligates the holder of the servient estate, his heirs, and assigns with respect to their use and management of land and activities conducted thereon, the object of such limitations and obligations being the maintenance or enhancement of the natural beauty of the land in question or of areas affected by it.

(4) "Secretary" means the Secretary of the North Carolina Department of Natural and Economic Resources, except as otherwise specified in this Article.

(5) "System" means the "North Carolina Trails System" as established in this Article and including all trails and trail segments, together with their rights-of-way, added by any of the procedures described in this Article. (1973, c. 670, s. 1.)

§ 113A-86. Composition of Trails System. — The State system of trails shall be composed of:

(1) State scenic trails, which are defined as extended trails so located as to provide maximum potential for the appreciation of natural areas and for the conservation and enjoyment of the significant scenic, historic, natural, ecological, geological or cultural qualities of the areas through which such trails may pass.

(2) State recreation trails, which are defined as trails planned principally for recreational value and may include trails for foot travel, horseback, nonmotorized bicycles, nonmotorized water vehicles, and two-wheel- and four-wheel-drive motorized vehicles. More than one of the aforesaid types of travel may be permitted on a single trail in the discretion of the Secretary.

(3) Connecting or side trails, which will provide additional points of public access to State recreation or State scenic trails or which will provide connections between such trails. (1973, c. 670, s. 1.)

§ 113A-87. Authority to designate trails. — The Department may establish and designate State scenic and recreation trails on lands administered by the Department; or on lands under the jurisdiction of a State department, political subdivision, or private lands providing fee-simple title, or lesser estates, scenic easements, easements of surface ingress and egress running with the land or leases are obtained from landowners through which a State trail may pass. (1973, c. 670, s. 1.)

§ 113A-88. North Carolina Trails Committee; composition; meetings and functions. — (a) Repealed by Session Laws 1973, c. 1262, s. 82.

(b) The Committee shall meet in various sections of the State not less than two times annually to advise the Department on all matters directly or indirectly pertaining to trails, their use, extent, location, and the other objectives and purposes of this Article.

(c) The Committee shall coordinate trail development among local governments, and shall assist local governments in the formation of their trail plans and advise the Department quarterly of its findings.

(d) The Secretary, with advice of the Committee, shall study trail needs and potentials, and make additions to the State Trails System as needed. He shall submit an annual report to the Governor and General Assembly on trail activities by the Department, including rights-of-way that have been established and on the program for implementing this Article. Each report shall include a short statement on the significance of the various trails to the System. The Secretary shall make such rules and regulations as to trail development, management, and use that are necessary for the proper implementation of this Article. (1973, c. 670, s. 1; c. 1262, s. 82.)

Cross Reference. — As to the creation, composition, powers and duties of the North Carolina Trails Committee, see §§ 143B-333, 143B-334.

Editor's Note. — The 1973 amendment repealed subsection (a), relating to the composition of the North Carolina Trails Committee.

§ 113A-89. Location of trails. — The process of locating routes of trails to be added to the system shall be as follows:

For State scenic trails, the Secretary, after consulting with the Committee, shall recommend a route. For State recreation trails and for connecting or side trails, the Secretary, after consulting with the Committee, shall select the route. When a route shall transverse land within the jurisdiction of a governmental unit or political subdivision, the Department shall consult with such unit or such subdivision prior to its final determination of the location of the route. The selected route shall be compatible with preservation or enhancement of the environment it transverses. Reasonable effort shall be made to minimize any adverse effects upon adjacent landowners and users. Notice of the selected route shall be published by the Department in a newspaper of general circulation in the area in which the trail is located, together with appropriate maps and descriptions to be conspicuously posted at the appropriate courthouse. Such publication shall be prior to the designation of the trail by the Secretary. (1973, c. 670, s. 1.)

§ 113A-90. Scenic easements within right-of-way. — Within the boundaries of the right-of-way, the Secretary of the North Carolina Department of Administration may acquire, on behalf of the State of North Carolina, lands in fee title, or interest in land in the form of scenic easements, cooperative agreements, easements of surface ingress and egress running with the land, leases, or less than fee estates. Acquisition of land or of interest therein may be by gift, purchased with donated funds or funds appropriated by the governmental agencies for this purpose, proceeds from the sale of bonds or exchange. Any change in value of land resulting from the grant of an easement shall be taken into consideration in the assessment of the land for tax purposes. (1973, c. 670, s. 1.)

§ 113A-91. Trails within parks; conflict of laws. — Any component of the System that is or shall become a part of any State park, recreation area, wildlife management area, or similar area shall be subject to the provisions of this Article as well as any other laws under which the other areas are administered, and in the case of conflict between the provisions the more restrictive provisions shall apply. (1973, c. 670, s. 1.)

§ 113A-92. Uniform trail markers. — The Department, in consultation with the Committee, shall establish a uniform marker for trails contained in the System. An additional appropriate symbol characterizing specific trails may be included on the marker. The markers shall be placed at all access points, together with signs indicating the modes of locomotion that are prohibited for the trail, provided that where the trail constitutes a portion of a national scenic trail, use of the national scenic trail uniform marker shall be considered sufficient. The

route of the trail and the boundaries of the right-of-way shall be adequately marked. (1973, c. 670, s. 1.)

§ 113A-93. Administrative policy. — The North Carolina Trails System shall be administered by the Department according to the policies and criteria set forth in this Article. The Department shall, in addition, have or designate the responsibility for maintaining the trails, building bridges, campsites, shelters, and related public-use facilities where required. (1973, c. 670, s. 1.)

§ 113A-94. Incorporation in National Trails System. — Nothing in this Article shall preclude a component of the State Trails System from becoming a part of the National Trails System. The Secretary shall coordinate the State Trails System with the National Trails System and is directed to encourage and assist any federal studies for inclusion of North Carolina trails in the National Trails System. The Department may enter into written cooperative agreements for joint federal-State administration of a North Carolina component of the National Trails System, provided such agreements for administration of land uses are not less restrictive than those set forth in this Article. (1973, c. 670, s. 1.)

§§ 113A-95 to 113A-99: Reserved for future codification purposes.

ARTICLE 7.

Coastal Area Management.

Part 1. Organization and Goals.

§ 113A-100. Short title. — This Article shall be known as the Coastal Area Management Act of 1974. (1973, c. 1284, s. 1.)

Editor's Note. — Session Laws 1973, c. 1284, s. 3, provides: "This act shall become effective July 1, 1974, except that the provisions of this act relating to the selection of the initial Commission shall become effective upon ratification, and the entire act shall expire on June 30, 1981." The act was ratified April 12, 1974.

Session Laws 1973, c. 1284, s. 1, contains a section numbered § 113A-129, which is a severability clause.

§ 113A-101. Cooperative State-local program. — This Article establishes a cooperative program of coastal area management between local and State governments. Local government shall have the initiative for planning. State government shall establish areas of environmental concern. With regard to planning, State government shall act primarily in a supportive standard-setting and review capacity, except where local governments do not elect to exercise their initiative. Enforcement shall be a concurrent State-local responsibility. (1973, c. 1284, s. 1.)

§ 113A-102. Legislative findings and goals. — (a) Findings. — It is hereby determined and declared as a matter of legislative finding that among North Carolina's most valuable resources are its coastal lands and waters. The coastal area, and in particular the estuaries, are among the most biologically productive regions of this State and of the nation. Coastal and estuarine waters and marshlands provide almost ninety percent (90%) of the most productive sport fisheries on the east coast of the United States. North Carolina's coastal area has an extremely high recreational and esthetic value which should be preserved and enhanced.

In recent years the coastal area has been subjected to increasing pressures which are the result of the often-conflicting needs of a society expanding in industrial development, in population, and in the recreational aspirations of its citizens. Unless these pressures are controlled by coordinated management, the very features of the coast which make it economically, esthetically, and

ecologically rich will be destroyed. The General Assembly therefore finds that an immediate and pressing need exists to establish a comprehensive plan for the protection, preservation, orderly development, and management of the coastal area of North Carolina.

In the implementation of the coastal area management plan, the public's opportunity to enjoy the physical, esthetic, cultural, and recreational qualities of the natural shorelines of the State shall be preserved to the greatest extent feasible; water resources shall be managed in order to preserve and enhance water quality and to provide optimum utilization of water resources; land resources shall be managed in order to guide growth and development and to minimize damage to the natural environment; and private property rights shall be preserved in accord with the Constitution of this State and of the United States.

(b) Goals. — The goals of the coastal area management system to be created pursuant to this Article are as follows:

(1) To provide a management system capable of preserving and managing the natural ecological conditions of the estuarine system, the barrier dune system, and the beaches, so as to safeguard and perpetuate their natural productivity and their biological, economic and esthetic values;

(2) To insure that the development or preservation of the land and water resources of the coastal area proceeds in a manner consistent with the capability of the land and water for development, use, or preservation based on ecological considerations;

(3) To insure the orderly and balanced use and preservation of our coastal resources on behalf of the people of North Carolina and the nation;

(4) To establish policies, guidelines and standards for:

a. Protection, preservation, and conservation of natural resources including but not limited to water use, scenic vistas, and fish and wildlife; and management of transitional or intensely developed areas and areas especially suited to intensive use or development, as well as areas of significant natural value;

b. The economic development of the coastal area, including but not limited to construction, location and design of industries, port facilities, commercial establishments and other developments;

c. Recreation and tourist facilities and parklands;

d. Transportation and circulation patterns for the coastal area including major thoroughfares, transportation routes, navigation channels and harbors, and other public utilities and facilities;

e. Preservation and enhancement of the historic, cultural, and scientific aspects of the coastal area;

f. Protection of present common-law and statutory public rights in the lands and waters of the coastal area;

g. Any other purposes deemed necessary or appropriate to effectuate the policy of this Article. (1973, c. 1284, s. 1.)

§ 113A-103. Definitions. — As used in this Article:

(1) "Advisory Council" means the Coastal Resources Advisory Council created by G.S. 113A-105.

(2) "Coastal area" means the counties that (in whole or in part) are adjacent to, adjoining, intersected by or bounded by the Atlantic Ocean (extending offshore to the limits of State jurisdiction, as may be identified by rule of the Commission for purposes of this Article, but in no event less than three geographical miles offshore) or any coastal sound. The Governor, in accordance with the standards set forth in this subdivision and in subdivision (3) of this section, shall designate the counties that constitute the "coastal area," as defined by this section, and his designation shall be final and conclusive. On or before May 1,

1974, the Governor shall file copies of a list of said coastal-area counties with the chairmen of the boards of commissioners of each county in the coastal area, with the mayors of each incorporated city within the coastal area (as so defined) having a population of 2,000 or more and of each incorporated city having a population of less than 2,000 whose corporate boundaries are contiguous with the Atlantic Ocean, and with the Secretary of State. The said coastal-area counties and cities shall thereafter transmit nominations to the Governor of members of the Coastal Resources Commission as provided in G.S. 113A-104(d).

(3) "Coastal sound" means Albemarle, Bogue, Core, Croatan, Currituck, Pamlico and Roanoke Sounds. For purposes of this Article, the inland limits of a sound on a tributary river shall be defined as the limits of seawater encroachment on said tributary river under normal conditions. "Normal conditions" shall be understood to include regularly occurring conditions of low stream flow and high tide, but shall not include unusual conditions such as those associated with hurricane and other storm tides. Unless otherwise determined by the Commission, the limits of seawater encroachment shall be considered to be the confluence of a sound's tributary river with the river or creek entering it nearest to the farthest inland movement of oceanic salt water under normal conditions. For purposes of this Article, the aforementioned points of confluence with tributary rivers shall include the following:

a. On the Chowan River, its confluence with the Meherrin River;
b. On the Roanoke River, its confluence with the northeast branch of the Cashie River;
c. On the Tar River, its confluence with Tranters Creek;
d. On the Neuse River, its confluence with Swift Creek;
e. On the Trent River, its confluence with Ready Branch.

Provided, however, that no county shall be considered to be within the coastal area which: (i) is adjacent to, adjoining or bounded by any of the above points of confluence and lies entirely west of said point of confluence; or (ii) is not bounded by the Atlantic Ocean and lies entirely west of the westernmost of the above points of confluence.

(4) "Commission" means the Coastal Resources Commission created by G.S. 113A-104.

(5) a. "Development" means any activity in a duly designated area of environmental concern (except as provided in paragraph b of this subdivision) involving, requiring, or consisting of the construction or enlargement of a structure; excavation; dredging; filling; dumping; removal of clay, silt, sand, gravel or minerals; bulkheading, driving of pilings; clearing or alteration of land as an adjunct of construction; alteration or removal of sand dunes; alteration of the shore, bank, or bottom of the Atlantic Ocean or any sound, bay, river, creek, stream, lake, or canal.

b. The following activities including the normal and incidental operations associated therewith shall not be deemed to be development under this section:

1. Work by a highway or road agency for the maintenance of an existing road, if the work is carried out on land within the boundaries of the existing right-of-way;
2. Work by any railroad company or by any utility and other persons engaged in the distribution and transmission of petroleum products, water, telephone or telegraph messages, or electricity for the purpose of inspecting, repairing, maintaining, or upgrading any existing substations, sewers,

mains, pipes, cables, utility tunnels, lines, towers, poles, tracks, and the like on any of its existing railroad or utility property or rights-of-way, or the extension of any of the above distribution-related facilities to serve development approved pursuant to G.S. 113A-121 or 113A-122;

3. Work by any utility and other persons for the purpose of construction of facilities for the development, generation, and transmission of energy to the extent that such activities are regulated by other law or by present or future rules of the State Utilities Commission regulating the siting of such facilities (including environmental aspects of such siting), and work on facilities used directly in connection with the above facilities;
4. The use of any land for the purpose of planting, growing, or harvesting plants, crops, trees, or other agricultural or forestry products, including normal private road construction, raising livestock or poultry, or for other agricultural purposes except where excavation or filling affecting estuarine waters (as defined in G.S. 113-229) or navigable waters is involved;
5. Emergency maintenance or repairs;
6. The construction of any accessory building customarily incident to an existing structure if the work does not involve filling, excavation, or the alteration of any sand dune or beach;
7. Completion of any development, not otherwise in violation of law, for which a valid building or zoning permit was issued prior to ratification of this Article and which development was initiated prior to the ratification of this Article;
8. Completion of installation of any utilities or roads or related facilities not otherwise in violation of law, within a subdivision that was duly approved and recorded prior to the ratification of this Article and which installation was initiated prior to the ratification of this Article;
9. Construction or installation of any development, not otherwise in violation of law, for which an application for a building or zoning permit was pending prior to the ratification of this Article and for which a loan commitment (evidenced by a notarized document signed by both parties) had been made prior to the ratification of this Article; provided, said building or zoning application is granted by July 1, 1974;
10. It is the intention of the General Assembly that if the provisions of any of the foregoing subparagraphs 1 to 10 of this paragraph are held invalid as a grant of an exclusive or separate emolument or privilege or as a denial of the equal protection of the laws, within the meaning of Article I, Secs. 19 and 32 of the North Carolina Constitution, the remainder of this Article shall be given effect without the invalid provision or provisions.

c. The Commission shall define by rule (and may revise from time to time) certain classes of minor maintenance and improvements which shall be exempted from the permit requirements of this Article, in addition to the exclusions set forth in paragraph b of this subdivision. In developing such rules the Commission shall consider, with regard to the class or classes of units to be exempted:

1. The size of the improvement or scope of the maintenance work;
2. The location of the improvement or work in proximity to dunes, waters, marshlands, areas of high seismic activity, areas of unstable soils or geologic formations, and areas enumerated in G.S. 113A-113(b)(3); and
3. Whether or nor dredging or filling is involved in the maintenance or improvement.

(6) "Key facilities" include the site location and the location of major improvement and major access features of key facilities, and mean:
   a. Public facilities, as determined by the Commission, on nonfederal lands which tend to induce development and urbanization of more than local impact, including but not limited to:
      1. Any major airport designed to serve as a terminal for regularly scheduled air passenger service or one of State concern;
      2. Major interchanges between the interstate highway system and frontage-access streets or highways; major interchanges between other limited-access highways and frontage-access streets or highways;
      3. Major frontage-access streets and highways, both of State concern; and
      4. Major recreational lands and facilities;
   b. Major facilities on nonfederal lands for the development, generation, and transmission of energy.

(7) "Lead regional organizations" mean the regional planning agencies created by and representative of the local governments of a multi-county region, and designated as lead regional organizations by the Governor.

(8) "Local government" means the governing body of any county or city which contains within its boundaries any lands or waters subject to this Article.

(9) "Person" means any individual, citizen, partnership, corporation, association, organization, business trust, estate, trust, public or municipal corporation, or agency of the State or local government unit, or any other legal entity however designated.

(10) "Rule" means any policy, regulation or requirement of general application adopted pursuant to this Article. (1973, c. 1284, s. 1.)

§ 113A-104. Coastal Resources Commission. — (a) The General Assembly hereby establishes within the Department of Natural and Economic Resources a commission to be designated the Coastal Resources Commission.

(b) Composition. — The Coastal Resources Commission shall consist of 15 members appointed by the Governor, as follows:

(1) One who shall at the time of appointment be actively connected with or have experience in commercial fishing.

(2) One who shall at the time of appointment be actively connected with or have experience in wildlife or sports fishing.

(3) One who shall at the time of appointment be actively connected with or have experience in marine ecology.

(4) One who shall at the time of appointment be actively connected with or have experience in coastal agriculture.

(5) One who shall at the time of appointment be actively connected with or have experience in coastal forestry.

(6) One who shall at the time of appointment be actively connected with or have experience in coastal land development.

(7) One who shall at the time of appointment be actively connected with or have experience in marine-related business (other than fishing and wildlife).

(8) One who shall at the time of appointment be actively connected with or have experience in engineering in the coastal area.
(9) One who shall at the time of appointment be actively associated with a State or national conservation organization.
(10) One who shall at the time of appointment be actively connected with or have experience in financing of coastal land development.
(11) Two who shall at the time of appointment be actively connected with or have experience in local government within the coastal area.
(12) Three at-large members.

(c) The Governor shall appoint in his sole discretion those members of the Commission whose qualifications are described in subdivisions (6) and (10), and one of the three members described in subdivision (12) of subsection (b) of this section. The remaining members of the Commission shall be appointed by the Governor after completion of the nominating procedures prescribed by subsection (d) of this section.

(d) On or before May 1 in every even-numbered year the Governor shall designate and transmit to the board of commissioners in each county in the coastal area four nominating categories applicable to that county for that year. Said nominating categories shall be selected by the Governor from among the categories represented, respectively by subdivisions (1), (2), (3), (4), (5), (7), (8), (9), (11) — two persons, and (12) — two persons, of subsection (b) of this section (or so many of the above-listed paragraphs as may correspond to vacancies by expiration of term that are subject to being filled in that year). On or before June 1 in every even-numbered year the board of commissioners of each county in the coastal area shall nominate (and transmit to the Governor the names of) one qualified person in each of the four nominating categories that was designated by the Governor for that county for that year. In designating nominating categories from biennium to biennium, the Governor shall equitably rotate said categories among the several counties of the coastal area as in his judgment he deems best; and he shall assign, as near as may be, an even number of nominees to each nominating category and shall assign in his best judgment any excess above such even number of nominees. On or before June 1 in every even-numbered year the governing body of each incorporated city within the coastal area having a population of 2,000 or more, and of each incorporated city having a population of less than 2,000 whose corporate boundaries are contiguous with the Atlantic Ocean, shall nominate (and transmit to the Governor the name of) one person as a nominee to the Commission. The Governor shall appoint 12 persons from among said city and county nominees to the Commission. The several boards of county commissioners and city governing bodies shall transmit the names, addresses, and a brief summary of the qualifications of their nominees to the Governor on or before June 1 in each even-numbered year, beginning in 1974; provided, that the Governor, by registered or certified mail, shall notify the chairmen or the mayors of the said local governing boards by May 20 in each such even-numbered year of the duties of local governing boards under this sentence. If any board of commissioners or city governing body fails to transmit its list of nominations to the Governor by June 1, the Governor may add to the nominations a list of qualified nominees in lieu of those that were not transmitted by the board of commissioners or city governing body. Within the meaning of this section, the "governing body" is the mayor and council of a city as defined in G.S. 160A-66. The population of cities shall be determined according to the most recent annual estimates of population as certified to the Secretary of Revenue by the Secretary of Administration.

(e) All nominees of the several boards of county commissioners and city governing bodies must reside within the coastal area, but need not reside in the county from which they were nominated. No more than one of those members appointed by the Governor from among said nominees may reside in a particular

county. No more than two members of the entire Commission, at any time, may reside in a particular county. No more than two members of the entire Commission, at any time, may reside outside the coastal area.

(f) Membership on the Coastal Resources Commission is hereby declared to be an office that may be held concurrently with other elective or appointive offices in addition to the maximum number of offices permitted to be held by one person under G.S. 128-1.1.

(g) The members shall serve staggered terms of office of four years. At the expiration of each member's term, the Governor shall reappoint or replace the member with a new member of like qualification (as specified in subsection (b) of this section), in the manner provided by subsections (c) and (d) of this section. The initial term shall be determined by the Governor in accordance with customary practice but eight of the initial members shall be appointed for two years and seven for four years.

(h) In the event of a vacancy arising otherwise than by expiration of term, the Governor shall appoint a successor of like qualification (as specified in subsection (b) of this section) who shall then serve the remainder of his predecessor's term. When any such vacancy arises, the Governor shall immediately notify the board of commissioners of each county in the coastal area and the governing body of each incorporated city within the coastal area having a population of 2,000 or more and of each incorporated city having a population of less than 2,000 whose corporate boundaries are contiguous with the Atlantic Ocean. Within 30 days after receipt of such notification each such county board and city governing body shall nominate and transmit to the Governor the name and address of one person who is qualified in the category represented by the position to be filled, together with a brief summary of the qualifications of the nominee. The Governor shall make the appointment from among said city and county nominees. If any county board or city governing body fails to make a timely transmittal of its nominee, the Governor may add to the nominations a qualified person in lieu of said nominee.

(i) The chairman shall be designated by the Governor from among the members of the Commission to serve as chairman at the pleasure of the Governor. The vice-chairman shall be elected by and from the members of the Commission and shall serve for a term of two years or until the expiration of his regularly appointed term.

(j) Compensation. — The members of the Commission shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5. (1973, c. 1284, s. 1.)

Cross Reference. — As to the effective date of the provisions of this section relating to the selection of the initial Commission, see note to § 113A-100.

§ 113A-105. Coastal Resources Advisory Council. — (a) Creation. — There is hereby created and established a council to be known as the Coastal Resources Advisory Council.

(b) The Coastal Resources Advisory Council shall consist of not more than 47 members appointed or designated as follows:

(1) Three individuals designated by the Secretary of Natural and Economic Resources from among the employees of his Department;
(2) The Secretary of the Department of Administration or his designee;
(3) The Secretary of the Department of Transportation and Highway Safety or his designee, and one additional member selected by him from his Department;
(4) The Secretary of the Department of Human Resources or his designee;
(5) The Commissioner of Agriculture or his designee;
(6) The Secretary of the Department of Cultural Resources or his designee;

(7) One member from each of the four multi-county planning districts of the coastal area to be appointed by the lead regional agency of each district;
(8) One representative from each of the counties in the coastal area to be designated by the respective boards of county commissioners;
(9) No more than eight additional members representative of cities in the coastal area and to be designated by the Commission;
(10) Three members selected by the Commission who are marine scientists or technologists;
(11) One member who is a local health director selected by the Commission upon the recommendation of the Secretary of Human Resources.

(c) Functions and Duties. — The Advisory Council shall assist the Secretaries of Administration and of Natural and Economic Resources in an advisory capacity:
(1) On matters which may be submitted to it by either of them or by the Commission, including technical questions relating to the development of rules and regulations, and
(2) On such other matters arising under this Article as the Council considers appropriate.

(d) Multiple Offices. — Membership on the Coastal Resources Advisory Council is hereby declared to be an office that may be held concurrently with other elective or appointive offices (except the office of Commission member) in addition to the maximum number of offices permitted to be held by one person under G.S. 128-1.1.

(e) Chairman and Vice-Chairman. — A chairman and vice-chairman shall be elected annually by the Council.

(f) Compensation. — The members of the Advisory Council who are not State employees shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5. (1973, c. 1284, s. 1.)

Editor's Note. — Pursuant to Session Laws 1973, c. 476, s. 128, "Secretary of Human Resources" has been substituted for "State Health Director" in subdivision (b)(11) of this section as enacted by Session Laws 1973, c. 1284, s. 1.

Part 2. Planning Processes.

§ 113A-106. Scope of planning processes. — Planning processes covered by this Article include the development and adoption of State guidelines for the coastal area and the development and adoption of a land-use plan for each county within the coastal area, which plans shall serve as criteria for the issuance or denial of development permits under Part 4. (1973, c. 1284, s. 1.)

§ 113A-107. State guidelines for the coastal area. — (a) State guidelines for the coastal area shall consist of statements of objectives, policies, and standards to be followed in public and private use of land and water areas within the coastal area. Such guidelines shall be consistent with the goals of the coastal area management system as set forth in G.S. 113A-102. They shall give particular attention to the nature of development which shall be appropriate within the various types of areas of environmental concern that may be designated by the Commission under Part 3. Such guidelines shall be adopted, and may be amended from time to time, in accordance with the procedures set forth in this section.

(b) The Commission shall be responsible for the preparation, adoption, and amendment of the State guidelines. In exercising this function it shall be furnished such staff assistance as it requires by the Secretary of Natural and Economic Resources and the Secretary of the Department of Administration,

together with such incidental assistance as may be requested of any other State department or agency.

(c) Within 90 days after July 1, 1974, the Commission shall submit proposed State guidelines to all cities and counties and lead regional organizations within the coastal area for their comments and recommendations. In addition, it shall submit such guidelines to all State, private, federal, regional, and local agencies which it deems to have special expertise with respect to any environmental, social, economic, esthetic, cultural, or historical aspect of development in the coastal area. It shall make copies of the proposed guidelines available to the public through the Department of Administration.

(d) Cities, counties, and lead regional organizations and such other agencies or individuals as desire to do so shall have 60 days from receipt of such proposed guidelines within which to submit to the Commission their written comments and recommendations concerning the proposed guidelines.

(e) The Commission shall review and consider all such written comments and recommendations. Within 210 days after the effective date of this Article, the Commission shall by rule adopt State guidelines for the coastal area. Certified copies of such guidelines shall be filed with the Secretary of State and the principal clerks of the Senate and House, and the guidelines shall be mailed to each city, county, and lead regional organization in the coastal area and to such other agencies or individuals as the Commission deems appropriate. Copies shall be made available to the public through the Department of Administration.

(f) The Commission may from time to time amend the State guidelines as it deems necessary. In addition, it shall review such guidelines each five years after July 1, 1974, in accordance with the procedures for adoption of the original guidelines, to determine whether further amendments are desirable. Any proposed amendments shall be submitted to all cities, counties, members of the General Assembly and lead regional organizations in the coastal area, and may be distributed to such other agencies and individuals as the Commission deems appropriate. All comments and recommendations of such governments, agencies, and individuals shall be submitted to the Commission in writing within 30 days of receipt of the proposed amendments. The Commission shall review and consider these written comments and thereupon may by rule reject or adopt the proposed amendments or modify and adopt the amendments. Certified copies of all amendments shall be filed with the Secretary of State and the principal clerks of the Senate and House. Amendments shall thereupon be mailed to each city, county, members of the General Assembly and lead regional organization in the coastal area and to such other agencies and individuals as the Commission deems appropriate. Copies shall be made available to the public through the Department of Administration. (1973, c. 1284, s. 1.)

§ 113A-108. Effect of State guidelines. — All local land-use plans adopted pursuant to this Article within the coastal area shall be consistent with the State guidelines. No permit shall be issued under Part 4 of this Article which is inconsistent with the State guidelines. Any State land policies governing the acquisition, use and disposition of land by State departments and agencies shall take account of and be consistent with the State guidelines adopted under this Article, insofar as lands within the coastal area are concerned. Any State land classification system which shall be promulgated shall take account of and be consistent with the State guidelines adopted under this Article, insofar as it applies to lands within the coastal area. (1973, c. 1284, s. 1.)

§ 113A-109. County letter of intent; timetable for preparation of land-use plan. — Within 120 days after July 1, 1974, each county within the coastal area shall submit to the Commission a written statement of its intent to develop a land-use plan under this Article or its intent not to develop such a plan. If any county states its intent not to develop a land-use plan or fails to submit a

statement of intent within the required period, the Commission shall prepare and adopt a land-use plan for that county. If a county states its intent to develop a land-use plan, it shall complete the preparation and adoption of such plan within 300 days after adoption of the State guidelines. In the event of failure by any county to complete its required plan within this time, the Commission shall promptly prepare and adopt such a plan.

In any case where the Commission has adopted a land-use plan for a county that county may prepare its own land-use plan in accordance with the procedures of this Article, and upon approval of such plan by the Commission it shall supersede the Commission's plan on a date specified by the Commission. (1973, c. 1284, s. 1.)

§ 113A-110. Land-use plans. — (a) A land-use plan for a county shall, for the purpose of this Article, consist of statements of objectives, policies, and standards to be followed in public and private use of land within the county, which shall be supplemented by maps showing the appropriate location of particular types of land or water use and their relationships to each other and to public facilities and by specific criteria for particular types of land or water use in particular areas. The plan shall give special attention to the protection and appropriate development of areas of environmental concern designated under Part 3. The plan shall be consistent with the goals of the coastal area management system as set forth in G.S. 113A-102 and with the State guidelines adopted by the Commission under G.S. 113A-107. The plan shall be adopted, and may be amended from time to time, in accordance with the procedures set forth in this section.

(b) The body charged with preparation and adoption of a county's land-use plan (whether the county government or the Commission) may delegate some or all of its responsibilities to the lead regional organization for the region of which the county is a part. Any such delegation shall become effective upon the acceptance thereof by the lead regional organization. Any county proposing a delegation to the lead regional organization shall give written notice thereof to the Commission at least two weeks prior to the date on which such action is to be taken. Any city or county within the coastal area may also seek the assistance or advice of its lead regional organization in carrying out any planning activity under this Article.

(c) The body charged with preparation and adoption of a county's land-use plan (whether the county or the Commission or a unit delegated such responsibility) may either (i) delegate to a city within the county responsibility for preparing those portions of the land-use plan which affect land within the city's zoning jurisdiction or (ii) receive recommendations from the city concerning those portions of the land-use plan which affect land within the city's zoning jurisdiction, prior to finally adopting the plan or any amendments thereto or (iii) delegate responsibility to some cities and receive recommendations from other cities in the county. The body shall give written notice to the Commission of its election among these alternatives. On written application from a city to the Commission, the Commission shall require the body to delegate plan-making authority to that city for land within the city's zoning jurisdiction if the Commission finds that the city is currently enforcing its zoning ordinance, its subdivision regulations, and the State Building Code within such jurisdiction.

(d) The body charged with adoption of a land-use plan may either adopt it as a whole by a single resolution or adopt it in parts by successive resolutions; said parts may either correspond with major geographical sections or divisions of the county or with functional subdivisions of the subject matters of the plan. Amendments and extensions to the plan may be adopted in the same manner.

(e) Prior to adoption or subsequent amendment of any land-use plan, the body charged with its preparation and adoption (whether the county or the Commission or a unit delegated such responsibility) shall hold a public hearing

at which public and private parties shall have the opportunity to present comments and recommendations. Notice of the hearing shall be given not less than 30 days before the date of the hearing and shall state the date, time, and place of the hearing; the subject of the hearing; the action which is proposed; and that copies of the proposed plan or amendment are available for public inspection at a designated office in the county courthouse during designated hours. Any such notice shall be published at least once in a newspaper of general circulation in the county.

(f) No land-use plan shall become finally effective until it has been approved by the Commission. The county or other unit adopting the plan shall transmit it, when adopted, to the Commission for review. The Commission shall afford interested persons an opportunity to present objections and comments regarding the plan, and shall review and consider each county land-use plan in light of such objections and comments, the State guidelines, the requirements of this Article, and any generally applicable standards of review adopted by rule of the Commission. Within 45 days after receipt of a county land-use plan the Commission shall either approve the plan or notify the county of the specific changes which must be made in order for it to be approved. Following such changes, the plan may be resubmitted in the same manner as the original plan.

(g) Copies of each county land-use plan which has been approved, and as it may have been amended from time to time, shall be maintained in a form available for public inspection by (i) the county, (ii) the Commission, and (iii) the lead regional organization of the region which includes the county. (1973, c. 1284, s. 1.)

§ 113A-111. Effect of land-use plan. — No permit shall be issued under Part 4 of this Article for development which is inconsistent with the approved land-use plan for the county in which it is proposed. No local ordinance or other local regulation shall be adopted which, within an area of environmental concern, is inconsistent with the land-use plan of the county or city in which it is effective; any existing local ordinances and regulations within areas of environmental concern shall be reviewed in light of the applicable local land-use plan and modified as may be necessary to make them consistent therewith. All local ordinances and other local regulations affecting a county within the coastal area, but not affecting an area of environmental concern, shall be reviewed by the Commission for consistency with the applicable county and city land-use plans and, if the Commission finds any such ordinance or regulation to be inconsistent with the applicable land-use plan, it shall transmit recommendations for modification to the adopting local government. (1973, c. 1284, s. 1.)

§ 113A-112. Planning grants. — The Secretary of Natural and Economic Resources is authorized to make annual grants to local governmental units for the purpose of assisting in the development of local plans and management programs under this Article. The Secretary shall develop and administer generally applicable criteria under which local governments may qualify for such assistance. (1973, c. 1284, s. 1.)

Part 3. Areas of Environmental Concern.

§ 113A-113. Areas of environmental concern; in general. — (a) The Coastal Resources Commission shall by rule designate geographic areas of the coastal area as areas of environmental concern and specify the boundaries thereof, in the manner provided in this Part.

(b) The Commission may designate as areas of environmental concern any one or more of the following, singly or in combination:

(1) Coastal wetlands as defined in G.S. 113-230(a);

(2) Estuarine waters as defined in G.S. 113-229(n)(2), that is, all the water of the Atlantic Ocean within the boundary of North Carolina and all

the waters of the bays, sounds, rivers, and tributaries thereto seaward of the dividing line between coastal fishing waters and inland fishing waters, as set forth in an agreement adopted by the Wildlife Resources Commission and the Department of Natural and Economic Resources filed with the Secretary of State, entitled "Boundary Lines, North Carolina Commercial Fishing — Inland Fishing Waters, Revised to March 1, 1965";

(3) Renewable resource areas where uncontrolled or incompatible development which results in the loss or reduction of continued long-range productivity could jeopardize future water, food or fiber requirements of more than local concern, which may include:
   a. Watersheds or aquifers that are present sources of public water supply, as identified by the Department of Human Resources or Environmental Management Commission, or that are classified for water-supply use pursuant to G.S. 143-214.1;
   b. Capacity use areas that have been declared by the Environmental Management Commission pursuant to G.S. 143-215.13(c) and areas wherein said Environmental Management Commission (pursuant to G.S. 143-215.3(d) or 143-215.3(a)(8)) has determined that a generalized condition of water depletion or water or air pollution exists;
   c. Prime forestry land (sites capable of producing 85 cubic feet per acre-year, or more, of marketable timber), as identified by the Department of Natural and Economic Resources.

(4) Fragile or historic areas, and other areas containing environmental or natural resources of more than local significance, where uncontrolled or incompatible development could result in major or irreversible damage to important historic, cultural, scientific or scenic values or natural systems, which may include:
   a. Existing national or State parks or forests, wilderness areas, the State Nature and Historic Preserve, or public recreation areas; existing sites that have been acquired for any of the same, as identified by the Secretary of Natural and Economic Resources; and proposed sites for any of the same, as identified by the Secretary of Natural and Economic Resources, provided that the proposed site has been formally designated for acquisition by the governmental agency having jurisdiction;
   b. Present sections of the natural and scenic rivers system;
   c. Stream segments that have been classified for scientific or research uses by the Environmental Management Commission, or that are proposed to be so classified in a proceeding that is pending before said Environmental Management Commission pursuant to G.S. 143-214.1 at the time of the designation of the area of environmental concern;
   d. Existing wildlife refuges, preserves or management areas, and proposed sites for the same, as identified by the Wildlife Resources Commission, provided that the proposed site has been formally designated for acquisition (as hereinafter defined) or for inclusion in a cooperative agreement by the governmental agency having jurisdiction;
   e. Complex natural areas surrounded by modified landscapes that do not drastically alter the landscape, such as virgin forest stands within a commercially managed forest, or bogs in an urban complex;

f. Areas that sustain remnant species or aberrations in the landscape produced by natural forces, such as rare and endangered botanical or animal species;
g. Areas containing unique geological formations, as identified by the State Geologist; and
h. Historic places that are listed, or have been approved for listing by the North Carolina Historical Commission, in the National Register of Historic Places pursuant to the National Historic Preservation Act of 1966; historical, archeological, and other places and properties owned, managed or assisted by the State of North Carolina pursuant to Chapter 121; and properties or areas that are or may be designated by the Secretary of the Interior as registered natural landmarks or as national historic landmarks;

(5) Areas such as waterways and lands under or flowed by tidal waters or navigable waters, to which the public may have rights of access or public trust rights, and areas which the State of North Carolina may be authorized to preserve, conserve, or protect under Article XIV, Sec. 5 of the North Carolina Constitution;

(6) Natural-hazard areas where uncontrolled or incompatible development could unreasonably endanger life or property, and other areas especially vulnerable to erosion, flooding, or other adverse effects of sand, wind and water, which may include:
a. Sand dunes along the Outer Banks;
b. Ocean and estuarine beaches and shoreline;
c. Floodways and floodplains;
d. Areas where geologic and soil conditions are such that there is a substantial possibility of excessive erosion or seismic activity, as identified by the State Geologist;
e. Areas with a significant potential for air inversions, as identified by the Environmental Management Commission.

(7) Areas which are or may be impacted by key facilities.

(c) In those instances where subsection (b) of this section refers to locations identified by a specified agency, said agency is hereby authorized to make the indicated identification from time to time and is directed to transmit the identification to the Commission; provided, however, that no designation of an area of environmental concern based solely on an agency identification of a proposed location may remain effective for longer than three years unless, in the case of paragraphs (4)a and d of subsection (b) of this section, the proposed site has been at least seventy-five percent (75%) acquired. Within the meaning of this section, "formal designation for acquisition" means designation in a formal resolution adopted by the governing body of the agency having jurisdiction (or by its chief executive, if it has no governing body), together with a direction in said resolution that the initial step in the land acquisition process be taken (as by filing an application with the Department of Administration to acquire property pursuant to G.S. 146-23).

(d) Additional grounds for designation of areas of environmental concern are prohibited unless enacted into law by an act of the General Assembly. (1973, c. 476, s. 128; c. 1262, ss. 23, 86; c. 1284, s. 1.)

Editor's Note. — Pursuant to Session Laws 1973, c. 476, s. 128, "Department of Human Resources" has been substituted for "North Carolina Board of Health" in paragraph a of subdivision (b)(3) of this section as enacted by Session Laws 1973, c. 1284, s. 1.

Pursuant to Session Laws 1973, c. 1262, ss. 23, 86, the following changes have been made in this section as enacted by Session Laws 1973, c. 1284: "Department of Natural and Economic Resources" has been substituted for "Department of Conservation and Development" in subdivision (b)(2); "Environmental Management Commission" has been substituted for "Board of Water and Air Resources" and for "Board" and "Department of Natural and Economic Re-

sources" has been substituted for "North Carolina Forest Service" in subsection (b)(3); and "Environmental Management Commission" has been substituted for "Board of Water and Air Resources" and for "Board" in subdivisions (b)(4) and (b)(6).

As to the authority of the Department of Human Resources and the Commission for Health Services to control and regulate inland waters, see § 130-159.

§ 113A-114. Designation of interim areas of environmental concern; notice of developments within such areas. — (a) Pending the designation of areas of environmental concern pursuant to G.S. 113A-115, the Commission may by rule designate such interim areas of environmental concern (hereafter referred to as "interim areas") as it deems appropriate.

(b) Not earlier than 15 days nor later than 75 days after July 1, 1974, the Secretary of Natural and Economic Resources, or his designee or designees, shall hold a one-day public hearing, at which public and private parties shall have the opportunity to present views and comments concerning proposed interim areas, in each of the following cities: Elizabeth City, Jacksonville, Manteo, Morehead City, Washington and Wilmington. The following provisions shall apply for all such hearings:

(1) The hearing shall begin with a description of interim areas proposed by the Secretary.

(2) Notice of any such hearing shall be given not less than seven days before the date of such hearing and shall state the date, time and place of the hearing, the subject of the hearing and the action to be taken. The notice shall state that a copy of a description of interim areas proposed by the Secretary (including a map of such proposed areas) is available for public inspection at the county courthouse of each county affected.

(3) Any such notice shall be published one time in a newspaper of general circulation in the county or counties affected at least seven days before the date of the public hearing.

(4) Any person who desires to be heard at such public hearing shall give notice thereof in writing to the Secretary on or before the date set for the hearing. The Secretary is authorized to set reasonable time limits for the oral presentation of views by any one person at any such hearing. The Secretary shall permit anyone who so desires to file a written argument or other statement with him in relation to proposed interim areas within five days following the conclusion of any public hearing or within such additional time as he may allow in his discretion.

(5) A record of each such hearing shall be presented to the Commission by the Secretary, together with the description of interim areas proposed by the Secretary (with such revisions as he deems appropriate in light of the hearings). Upon receipt of said hearing records and description, and consideration of submitted evidence and arguments with respect to any proposed action pursuant to this section, the Commission shall adopt its final action with respect thereto and shall file a duly certified copy thereof with the Secretary of State and with the board of commissioners of each county affected thereby.

(c) The Commission may revise the interim areas (or any part thereof) at any time in the manner provided by subsection (b) of this section, except that the hearing or hearings shall be held in each county in which lands to be affected are located.

(d) The interim areas (with such revisions as may be made pursuant to this section) shall remain in effect until designation of areas of environmental concern are made purusuant to G.S. 113A-115.

(e) During the period while interim areas are in effect, any person proposing to undertake any development in an interim area shall notify the Commission at least 60 days in advance of initiating construction, installation or other

land- or water-disturbing activity in connection with said development. (1973, c. 1284, s. 1.)

§ 113A-115. Designation of areas of environmental concern. — (a) Prior to adopting any rule permanently designating any area of environmental concern the Secretary and the Commission shall hold a public hearing in each county in which lands to be affected are located, at which public and private parties shall have the opportunity to present comments and views. The following provisions shall apply for all such hearings:

(1) Notice of any such hearing shall be given not less than 30 days before the date of such hearing and shall state the date, time and place of the hearing, the subject of the hearing, and the action to be taken. The notice shall specify that a copy of the description of the area or areas of environmental concern proposed by the Secretary is available for public inspection at the county courthouse of each county affected.

(2) Any such notice shall be published at least once in one newspaper of general circulation in the county or counties affected at least 30 days before the date on which the public hearing is scheduled to begin.

(3) Any person who desires to be heard at such public hearing shall give notice thereof in writing to the Secretary on or before the first date set for the hearing. The Secretary is authorized to set reasonable time limits for the oral presentation of views by any one person at any such hearing. The Secretary shall permit anyone who so desires to file a written argument or other statement with him in relation to any proposed plan any time within 30 days following the conclusion of any public hearing or within such additional time as he may allow by notice given as prescribed in this section.

(4) Upon completion of the hearing and consideration of submitted evidence and arguments with respect to any proposed action pursuant to this section, the Commission shall adopt its final action with respect thereto and shall file a duly certified copy thereof with the Secretary of State and with the board of commissioners of each county affected thereby.

(b) In addition to the notice required by G.S. 113A-115(a)(2) notice shall be given to any interested State agency and to any citizen or group that has filed a request to be notified of a public hearing to be held under this section.

(c) The Commission shall review the designated areas of environmental concern at least biennially. New areas may be designated and designated areas may be deleted, in accordance with the same procedures as apply to the original designations of areas under this section. Areas shall not be deleted unless it is found that the conditions upon which the original designation was based shall have been found to be substantially altered. (1973, c. 1284, s. 1.)

Part 4. Permit Letting and Enforcement.

§ 113A-116. Local government letter of intent. — Within one year after July 1, 1974, each county and city within the coastal area shall submit to the Commission a written statement of its intent to act, or not to act, as a permit-letting agency under G.S. 113A-121. If any city or county states its intent not to act as a permit-letting agency or fails to submit a statement of intent within the required period, the Secretary of Natural and Economic Resources shall issue permits therein under G.S. 113A-121; provided that a county may submit a letter of intent to issue permits in any city within said county that disclaims its intent to issue permits or fails to submit a letter of intent. Provided, however, should any city or county fail to become a permit-letting agency for any reason, but shall later express its desire to do so, it shall be permitted by the Coastal Resources Commission to qualify as such an agency by following the procedure herein set forth for qualification in the first instance. (1973, c. 1284, s. 1.)

§ 113A-117. Implementation and enforcement programs. — (a) The Secretary of Natural and Economic Resources shall develop and present to the Commission for consideration and to all cities and counties and lead regional organizations within the coastal area for comment a set of criteria for local implementation and enforcement programs. In the preparation of such criteria, the Secretary shall emphasize the necessity for the expeditious processing of permit applications. Said criteria may contain recommendations and guidelines as to the procedures to be followed in developing local implementation and enforcement programs, the scope and coverage of said programs, minimum standards to be prescribed in said programs, staffing of permit-letting agencies, permit-letting procedures, and priorities of regional or statewide concern. Within 14 months after July 1, 1974, the Commission shall adopt and transmit said criteria (with any revisions) to each coastal-area county and city that has filed an applicable letter of intent, for its guidance.

(b) The governing body of each city in the coastal area that filed an affirmative letter of intent shall adopt an implementation and enforcement plan with respect to its zoning area within 20 months after July 1, 1974. The board of commissioners of each coastal-area county that filed an affirmative letter of intent shall adopt an implementation plan with respect to portions of the county outside city zoning areas within 20 months after July 1, 1974, provided, however, that a county implementation and enforcement plan may also cover city jurisdictions for those cities within the counties that have not filed affirmative letters of intent pursuant to G.S. 113A-116. Prior to adopting the implementation and enforcement program the local governing body shall hold a public hearing at which public and private parties shall have the opportunity to present comments and views. Notice of the hearing shall be given not less than 15 days before the date of the hearing, and shall state the date, time and place of the hearing, the subject of the hearing, and the action which is to be taken. The notice shall state that copies of the proposed implementation and enforcement program are available for public inspection at the county courthouse. Any such notice shall be published at least once in one newspaper of general circulation in the county at least 15 days before the date on which the public hearing is scheduled to begin.

(c) Each coastal-area county and city shall transmit its implementation and enforcement program when adopted to the Commission for review. The Commission shall afford interested persons an opportunity to present objections and comments regarding the program, and shall review and consider each local implementation and enforcement program submitted in light of such objections and comments, the Commission's criteria and any general standards of review applicable throughout the coastal area as may be adopted by the Commission. Within 45 days after receipt of a local implementation and enforcement program the Commission shall either approve the program or notify the county or city of the specific changes that must be made in order for it to be approved. Following such changes, the program may be resubmitted in the same manner as the original program.

(d) If the Commission determines that any local government is failing to administer or enforce an approved implementation and enforcement program, it shall notify the local government in writing and shall specify the deficiencies of administration and enforcement. If the local government has not taken corrective action within 90 days of receipt of notification from the Commission, the Commission shall assume enforcement of the program until such time as the local government indicates its willingness and ability to resume administration and enforcement of the program. (1973, c. 1284, s. 1.)

§ 113A-118. Permit required. — (a) After the date designated by the Secretary of Natural and Economic Resources pursuant to G.S. 113A-125, every person before undertaking any development in any area of environmental

concern shall obtain (in addition to any other required State or local permit) a permit pursuant to the provisions of this Part.

(b) Under the expedited procedure provided for by G.S. 113A-121, the permit shall be obtained from the appropriate city or county for any minor development; provided, that if the city or county has not developed an approved implementation and enforcement program, the permit shall be obtained from the Secretary of Natural and Economic Resources.

(c) Under the quasi-judicial procedure provided for by G.S. 113A-122, the permit shall be obtained from the Commission.

(d) Within the meaning of this Part:

(1) A "major development" is any development which requires permission, licensing, approval, certification or authorization in any form from the Environmental Management Commission, the Department of Human Resources, the State Department of Natural and Economic Resources, the State Department of Administration, the North Carolina Mining Commission, the North Carolina Pesticides Board, or the North Carolina Sedimentation Control Board; or which occupies a land or water area in excess of 20 acres; or which contemplates drilling for or excavating natural resources on land or under water; or which occupies on a single parcel a structure or structures in excess of a ground area of 60,000 square feet.

(2) A "minor development" is any development other than a "major development."

(e) If, within the meaning of G.S. 113A-103(5)b3, the siting of any utility facility for the development, generation or transmission of energy is subject to regulation under this Article rather than by the State Utilities Commission or by other law, permits for such facilities shall be obtained from the Coastal Resources Commission rather than from the appropriate city or county. (1973, c. 476, s. 128; c. 1262, ss. 23, 33; c. 1284, s. 1.)

Editor's Note. — Pursuant to Session Laws 1973, c. 476, s. 128, "Department of Human Resources" has been substituted for "State Board of Health" in subsection (d) of this section as enacted by Session Laws 1973, c. 1284, s. 1.

Pursuant to Session Laws 1973, c. 1262, ss. 23, 33, "Environmental Management Commission" has been substituted for "Board of Water and Air Resources," "Department of Natural and Economic Resources" has been substituted for "Departments of Natural and Economic Resources or Conservation and Development" and "Mining Commission" has been substituted for "Mining Council" in this section as enacted by Session Laws 1973, c. 1284, s. 1.

§ 113A-119. Permit applications generally. — (a) Any person required to obtain a permit under this Part shall file with the Secretary of Natural and Economic Resources and (in the case of a permit sought from a city or county) with the designated local official an application for a permit in accordance with the form and content designated by the Secretary and approved by the Commission. The applicant must submit with the application a check or money order payable to the Department or the city or county, as the case may be, constituting a reasonable fee (not to exceed twenty-five dollars ($25.00)) set by the Commission to cover the administrative costs in processing the said application.

(b) Upon receipt of an application, the Secretary shall issue public notice of the proposed development (i) by mailing a copy of the application, or a brief description thereof together with a statement indicating where a detailed copy of the proposed development may be inspected, to any citizen or group which has filed a request to be notified of the proposed development, and to any interested State agency; (ii) by posting or causing to be posted a copy of the application at the location of the proposed development; and (iii) by publishing

notice of the application at least once in one newspaper of general circulation in the county or counties wherein the development would be located at least seven days before final action on a permit under G.S. 113A-121 or before the beginning of the hearing on a permit under G.S. 113A-122. The notice shall set out that any comments on the development should be submitted to the Secretary by a specified date, not to exceed 15 days from the date of the newspaper publication of the notice. Public notice under this subsection is mandatory.

(c) Within the meaning of this Part, the "designated local official" is the official who has been designated by the local governing body to receive and consider permit applications under this Part. (1973, c. 1284, s. 1.)

§ 113A-120. Grant or denial of permits. — (a) After consideration of submitted evidence and arguments submitted at the hearing, or otherwise in the case where no hearing was conducted, the responsible official or body shall deny the application for permit upon finding:

(1) In the case of coastal wetlands, that the development would contravene an order that has been or could be issued pursuant to G.S. 113-230.

(2) In the case of estuarine waters, that a permit for the development would be denied pursuant to G.S. 113-229(e).

(3) In the case of a renewable resource area, that the development will result in loss or significant reduction of continued long-range productivity that would jeopardize one or more of the water, food or fiber requirements of more than local concern identified in paragraphs a to c of subsection (b)(3) of G.S. 113A-113.

(4) In the case of a fragile or historic area, or other area containing environmental or natural resources of more than local significance, that the development will result in major or irreversible damage to one or more of the historic, cultural, scientific, environmental or scenic values or natural systems identified in paragraphs a to h of subsection (b)(4) of G.S. 113A-113.

(5) In the case of areas covered by G.S. 113A-113(4) [G.S. 113A-113(b)(4)], that the development will jeopardize the public rights or interests specified in said subdivision.

(6) In the case of natural hazard areas, that the development would occur in one or more of the areas identified in paragraphs a to e of subsection (b)(6) [of G.S. 113A-113] in such a manner as to unreasonably endanger life or property.

(7) In the case of areas which are or may be impacted by key facilities, that the development is inconsistent with the State guidelines or the local land-use plans, or would contravene any of the provisions of subdivisions (1) to (6) of this subsection.

(8) In any case, that the development is inconsistent with the State guidelines or the local land-use plans.

(b) In the absence of such findings, a permit shall be granted. The permit may be conditioned upon the applicant's amending his proposal to take whatever measures are reasonably necessary to protect the public interest with respect to the factors enumerated in subsection (a) of this section.

(c) Variances. — Any person may petition the Commission for a variance granting permission to use his land in a manner otherwise prohibited by rules, regulations, standards or limitations prescribed by the Commission, or orders issued by the Commission, pursuant to this Article. When it finds that (i) practical difficulties or unnecessary hardships would result from strict application of the guidelines, rules, regulations, standards, or other restrictions applicable to the property, (ii) such difficulties or hardships result from conditions which are peculiar to the property involved, (iii) such conditions could not reasonably have been anticipated when the applicable guidelines, rules, regulations, standards, or restrictions were adopted or amended, the

Commission may vary or modify the application of the restrictions to the property so that the spirit, purpose, and intent of the restrictions are preserved, public safety and welfare secured, and substantial justice preserved. In varying such regulations, the Commission may impose reasonable and appropriate conditions and safeguards upon any permit it issues. The Commission may conduct a hearing within 45 days from the receipt of the petition and shall notify such persons and agencies that may have an interest in the subject matter of the time and place of the hearing. (1973, c. 1284, s. 1.)

§ 113A-121. Permits for minor developments under expedited procedures. — (a) Applications for permits for minor developments shall be expeditiously processed so as to enable their promptest feasible disposition.

(b) In cities and counties that have developed approved implementation and enforcement programs, applications for permits for minor developments shall be considered and determined by the designated local official of the city or county as the case may be. In cities and counties that have not developed approved implementation and enforcement programs, such applications shall be considered and determined by the Secretary of Natural and Economic Resources.

(c) Failure of the Secretary or the designated local official (as the case may be) to approve or deny an application for a permit for a minor development within 30 days from receipt of application shall be treated as approval of such application, except that the Secretary or the designated local official (as the case may be) may extend such deadline by not more than an additional 30 days if necessary properly to consider the application. No waiver of the foregoing time limitation (or of the time limitation established in G.S. 113A-122(c)) shall be required of any applicant.

(d) Any person who is directly affected by the decision of the Secretary or the designated local official (as the case may be) to grant or deny an application for minor development permit may request within 20 days of such action, a hearing before the Commission. In the case of a grant or denial of a permit by a local official, the Secretary shall be considered to be a person affected by the decision. Pending final disposition of any such appeal, no action shall be taken which would be unlawful in the absence of a permit issued under this section. (1973, c. 1284, s. 1.)

§ 113A-122. Permits under quasi-judicial procedures. — (a) The procedure set forth in this section applies to all permit applications for major developments, as well as to permit applications for minor developments whose disposition was appealed under G.S. 113A-121(d). All permit applications subject to this section shall be heard by the Commission.

(b) The following provisions shall be applicable in connection with hearings pursuant to this section:

(1) Any hearing held pursuant to this section shall be held upon not less than 30 days' written notice given by the Commission to any person who is a party to the proceedings with respect to which such hearing is to be held, unless a shorter notice is agreed upon by all such parties.

(2) All hearings under this section shall be open to the public. Any person to whom a delegation of power is made to conduct a hearing shall report the hearing with its evidence and record to the Commission for decision.

(3) A full and complete record of all proceedings at any hearing under this section shall be taken by a reporter appointed by the Commission or by other method approved by the Attorney General. Any party to a proceeding shall be entitled to a copy of such record upon the payment of the reasonable cost thereof as determined by the Commission.

(4) The Commission and its duly authorized agents shall follow generally the procedures applicable in civil actions in the superior court insofar

as practicable, including rules and procedures with regard to the taking and use of depositions, the making and use of stipulations, and the entering into of agreed settlements and consent orders.

(5) The Commission and its duly authorized agents may administer oaths and may issue subpoenas for the attendance of witnesses and the production of books, papers, and other documents belonging to the said person.

(6) Subpoenas issued by the Commission in connection with any hearing under this section shall be directed to any officer authorized by law to serve process, and the further procedures and rules of law applicable with respect thereto shall be prescribed in connection with subpoenas to the same extent as if issued by a court of record. In case of a refusal to obey a subpoena issued by the Commission, application may be made to the superior court of the appropriate county for enforcement thereof.

(7) The burden of proof at any hearing under this section on appeal pursuant to G.S. 113A-121(d) shall be upon the Secretary. The burden of proof at any hearing under this section on a permit application for a major development shall be upon the applicant. The provisions of this paragraph shall apply only to the hearings specified in this paragraph.

(8) No decision or order of the Commission shall be made in any proceeding unless the same is supported by competent, material, and substantial evidence upon consideration of the whole record.

(9) Following any hearing, the Commission shall afford the parties thereto an opportunity to submit within 30 days, or within such additional time as prescribed by the Commission, proposed findings of fact and conclusions of law and any brief in connection therewith.

(10) After hearing the evidence, the Commission shall grant or deny the permit in accordance with the provisions of G.S. 113A-120. All such orders and decisions of the Commission shall set forth separately the Commission's findings of fact and conclusions of law and shall, wherever necessary, cite the appropriate provision of law or other source of authority on which any action or decision of the Commission is based.

(11) The Commission shall have the authority to adopt a seal which shall be the seal of said Commission and which shall be judicially noticed by the courts of the State. Any document, proceeding, order, decree, special order, rule, regulation, rule of procedure or any other official act or records of the Commission or its minutes may be certified by the Executive Director under his hand and the seal of the Commission and when so certified shall be received in evidence in all actions or proceedings in the courts of the State without further proof of the identity of the same if such records are competent, relevant and material in any such action to proceedings. The Commission shall have the right to take judicial notice of all studies, reports, statistical data or any other official reports or records of the federal government or of any sister state and all such records, reports and data may be placed in evidence by the Commission or by any other person or interested party where material, relevant and competent.

(c) Failure of the Commission to approve or deny an application for a permit (or to dispose of an appeal) pursuant to this section within 90 days from receipt of application or notice of appeal shall be treated as approval of such application or of the action appealed from, as the case may be, except that the Commission may extend such deadline by not more than an additional 90 days if necessary properly to consider the application or the appeal.

(d) All notices which are required to be given by the Secretary or Commission or by any party to a proceeding under this section shall be given by registered

or certified mail to all persons entitled thereto. The date of receipt or refusal for such registered or certified mail shall be the date when such notice is deemed to have been given. Notice by the Commission may be given to any person upon whom a summons may be served in accordance with the provisions of law covering civil actions in the superior courts of this State. The Commission may prescribe the form and content of any particular notice. (1973, c. 1284, s. 1.)

§ 113A-123. Judicial review. — (a) Any person directly affected by any final decision or order of the Commission under this Part may appeal such decision or order to the superior court of the county where the land or any part thereof is located, pursuant to the provisions of chapter 150[A] of the General Statutes. Pending final disposition of any appeal, no action shall be taken which would be unlawful in the absence of a permit issued under this Part.

(b) Any person having a recorded interest or interest by operation of law in or registered claim to land within an area of environmental concern affected by any final decision or order of the Commission under this Part may, within 90 days after receiving notice thereof, petition the superior court to determine whether the petitioner is the owner of the land in question, or an interest, therein, and in case he is adjudged the owner of the subject land, or an interest therein, the court shall determine whether such order so restricts the use of his property as to deprive him of the practical uses thereof, being not otherwise authorized by law, and is therefore an unreasonable exercise of the police power because the order constitutes the equivalent of taking without compensation. The burden of proof shall be on petitioner as to ownership and the burden of proof shall be on the Commission to prove that the order is not an unreasonable exercise of the police power, as aforesaid. Either party shall be entitled to a jury trial on all issues of fact, and the court shall enter a judgment in accordance with the issues, as to whether the Commission order shall apply to the land of the petitioner. The Secretary of Natural and Economic Resources shall cause a copy of such finding to be recorded forthwith in the register of deeds office in the county where the land is located. The method provided in this subsection for the determination of the issue of whether such order constitutes a taking without compensation shall be exclusive and such issue shall not be determined in any other proceeding. Any action authorized by this subsection shall be calendared for trial at the next civil session of superior court after the summons and complaint have been served for 30 days, regardless of whether issues were joined more than 10 days before the session. It is the duty of the presiding judge to expedite the trial of these actions and to give them a preemptory setting over all others, civil or criminal. From any decision of the superior court either party may appeal to the court of appeals as a matter of right.

(c) After a finding has been entered that such order shall not apply to certain land as provided in the preceding subsection, the Department of Administration, upon the request of the Commission and upon finding that sufficient funds are available therefor, and with the consent of the Governor and Council of State may take the fee or any lesser interest in such land in the name of the State by eminent domain under the provisions of Chapter 146 of the General Statutes and hold the same for the purposes set forth in this Article. (1973, c. 1284, s. 1; c. 1331, s. 3.)

Editor's Note. — Pursuant to Session Laws 1973, c. 1331, s. 3, effective July 1, 1975, the reference to Chapter 150[A] has been substituted for a reference to Article 33 of Chapter 143 in subsection (a).

§ 113A-124. Additional powers and duties. — (a) The Secretary of Natural and Economic Resources shall have the following additional powers and duties under this Article:

(1) To conduct or cause to be conducted, investigations of proposed developments in areas of environmental concern in order to obtain sufficient evidence to enable a balanced judgment to be rendered concerning the issuance of permits to build such developments.
(2) To cooperate with the Secretary of the Department of Administration in drafting State guidelines for the coastal area.
(3) To keep a list of interested persons who wish to be notified of proposed developments and proposed rules designating areas of environmental concern and to so notify these persons of such proposed developments by regular mail. A reasonable registration fee to defray the cost of handling and mailing notices may be charged to any person who so registers with the Commission.
(4) To propose rules and regulations to implement this Article for consideration by the Commission.
(5) To delegate such of his powers as he may deem appropriate to one or more qualified employees of the Department of Natural and Economic Resources or to any local government, provided that the provisions of any such delegation of power shall be set forth in departmental regulations.
(6) To delegate the power to conduct a hearing, on his behalf, to any member of the Commission or to any qualified employee of the Department of Natural and Economic Resources. Any person to whom a delegation of power is made to conduct a hearing shall report his recommendations with the evidence and the record of the hearing to the Secretary for decision or action.

(b) In order to carry out the provisions of this Article the secretaries of administration and of Natural and Economic Resources may employ such clerical, technical and professional personnel, and consultants with such qualifications as the Commission may prescribe, in accordance with the State personnel regulations and budgetary laws, and are hereby authorized to pay such personnel from any funds made available to them through grants, appropriations, or any other sources. In addition, the said secretaries may contract with any local governmental unit or lead regional organization to carry out the planning provisions of this Article.

(c) The Commission shall have the following additional powers and duties under this Article:

(1) To recommend to the Secretary of Natural and Economic Resources the acceptance of donations, gifts, grants, contributions and appropriations from any public or private source to use in carrying out the provisions of this Article.
(2) To recommend to the Secretary of Administration the acquisition by purchase, gift, condemnation, or otherwise, lands or any interest in any lands within the coastal area.
(3) To hold such public hearings as the Commission deems appropriate.
(4) To delegate the power to conduct a hearing, on behalf of the Commission, to any member of the Commission or to any qualified employee of the Department of Natural and Economic Resources. Any person to whom a delegation of power is made to conduct a hearing shall report his recommendations with the evidence and the record of the hearing to the Commission for decision or action.
(5) To adopt from time to time and to modify and revoke official regulations interpreting and applying the provisions of this Article and rules of procedure establishing and amplifying the procedures to be followed in the administration of this Article.

(d) The Attorney General shall act as attorney for the Commission and shall initiate actions in the name of, and at the request of, the Commission, and shall

represent the Commission in the hearing of any appeal from or other review of any order of the Commission. (1973, c. 1284, s. 1.)

§ 113A-125. Transitional provisions. — (a) Existing regulatory permits shall continue to be administered within the coastal area by the agencies presently responsible for their administration until a date (not later than 27 months after July 1, 1974), to be designated by the Secretary of Natural and Economic Resources as the permit changeover date. Said designation shall be effective from and after its filing with the Secretary of State.

(b) From and after the "permit changeover date," all existing regulatory permits within the coastal area shall be administered in coordination and consultation with (but not subject to the veto of) the Commission. No such existing permit within the coastal area shall be issued, modified, renewed or terminated except after consultation with the Commission. The provisions of this subsection concerning consultation and coordination shall not be interpreted to authorize or require the extension of any deadline established by this Article or any other law for completion of any permit, licensing, certification or other regulatory proceedings.

(c) Within the meaning of this section, "existing regulatory permits" include dredge and fill permits issued pursuant to G.S. 113-229; sand dune permits issued pursuant to G.S. 104B-4; air pollution control and water pollution control permits, special orders or certificates issued pursuant to G.S. 143-215.1 and 143-215.2, or any other permits, licenses, authorizations, approvals or certificates issued by the Board of Water and Air Resources pursuant to Chapter 143; capacity use area permits issued pursuant to G.S. 143-215.15; final approval of dams pursuant to G.S. 143-215.30; floodway permits issued pursuant to G.S. 143-215.54; water diversion authorizations issued pursuant to G.S. 143-354(c); oil refinery permits issued pursuant to G.S. 143-215.99; mining operating permits issued pursuant to G.S. 74-51; permissions for construction of wells issued pursuant to G.S. 87-88; restricted-use pesticide permits issued pursuant to G.S. 143-440(b), pesticide applicator licenses issued pursuant to G.S. 143-452 for persons who may apply pesticides within the coastal area, and regulations concerning pesticide application within the coastal area issued pursuant to G.S. 143-458; approvals by the Department of Human Resources of plans for water supply, drainage or sewerage, pursuant to G.S. 130-161.1 and 130-161.2; standards and approvals for solid waste disposal sites and facilities, adopted by the Department of Human Resources pursuant to Chapter 130, Article 13B; permits relating to sanitation of shellfish, crustacea or scallops issued pursuant to Chapter 130, Articles 14A or 14B; permits, approvals, authorizations and regulations issued by the Department of Human Resources pursuant to Articles 23 or 24 of Chapter 130 with reference to mosquito control programs or districts; any permits, licenses, authorizations, regulations, approvals or certificates issued by the Department of Human Resources relating to septic tanks or water wells; oil or gas well regulations and orders issued for the protection of environmental values or resources pursuant to G.S. 113-391; a certificate of public convenience and necessity issued by the State Utilities Commission pursuant to Chapter 62 for any public utility plant or system, other than a carrier of persons or property; permits, licenses, leases, options, authorization or approvals relating to the use of State forestlands, State parks or other state-owned land issued by the State Department of Administration, the State Department of Natural and Economic Resources or any other State department, agency or institution; any approvals of erosion control plans that may be issued by the North Carolina Sedimentation Control Commission pursuant to G.S. 113A-60 or 113A-61; and any permits, licenses, authorizations, regulations, approvals or certificates issued by any State agency pursuant to any environmental protection legislation not specified in this subsection that may be enacted prior to the permit changeover date.

(d) The Commission shall conduct continuing studies addressed to developing a better coordinated and more unified system of environmental and land-use permits in the coastal area, and shall report its recommendations thereon from time to time to the General Assembly. Specifically, the Commission shall report to the 1975 General Assembly recommended procedures to implement the requirement of subsection (b) of this section for administration of existing regulatory permits within the coastal area in coordination and consultation with the Commission. In its 1975 recommendations, the Commission shall seek to develop procedures that are administratively practicable, that are not unduly burdensome for the affected agencies, and that are adapted to the circumstances of each agency, taking into account the volume of permits issued, the location of the regulated activity (whether or not within or near an area of environmental concern), the significance of the environmental consequences of the regulated activity, and the scheduling problems and needs of the regulatory agency: Provided, however, that no consultation or coordination shall be required in advance of issuance of individual pesticide applicator licenses, but only periodic consultation concerning the overall effect of the applicator licensing program within the coastal area. In its 1975 recommendations, the Commission shall also evaluate the desirability of legislation to provide for coordination of environmental permits at the option of permit applicants. In developing its 1975 recommendations, the Commission shall meet with all affected State agencies and shall hold one or more public hearings concerning its recommendations. (1973, c. 1284, s. 1.)

Editor's Note. — Section 130-161.2, referred to in subsection (c) of this section, does not exist.

§ 113A-126. Injunctive relief and penalties. — (a) Upon violation of any of the provisions of this Article or of any regulation, rule or order adopted under the authority of this Article the Secretary may, either before or after the institution of proceedings for the collection of any penalty imposed by this Article for such violation, institute a civil action in the General Court of Justice in the name of the State upon the relation of the Secretary for injunctive relief to restrain the violation and for such other or further relief in the premises as said court shall deem proper. Neither the institution of the action nor any of the proceedings thereon shall relieve any party to such proceedings from any penalty prescribed by this Article for any violation of same.

(b) Upon violation of any of the provisions of this Article relating to permits for minor developments issued by a local government, or of any regulation, rule or order adopted under the authority of this Article relating to such permits, the designated local official may, either before or after the institution of proceedings for the collection of any penalty imposed by this Article for such violation, institute a civil action in the General Court of Justice in the name of the affected local government upon the relation of the designated local official for injunctive relief to restrain the violation and for such other and further relief in the premises as said court shall deem proper. Neither the institution of the action nor any of the proceedings thereon shall relieve any party to such proceedings from any penalty prescribed by this Article for any violation of same.

(c) Any person who shall be adjudged to have knowingly or willfully violated any provision of this Article, or any regulation, rule or order adopted pursuant to this Article, shall be guilty of a misdemeanor, and for each violation shall be liable for a penalty of not less than one hundred dollars ($100.00) nor more than one thousand dollars ($1,000) or shall be imprisoned for not more than 60 days, or both. In addition, if any person continues to violate or further violates, any such provision, regulation, rule or order after written notice from the Secretary

or (in the case of a permit for a minor development issued by a local government) written notice from the designated local official, the court may determine that each day during which the violation continues or is repeated constitutes a separate violation subject to the foregoing penalties.

(d) (1) A civil penalty of not more than one thousand dollars ($1,000) may be assessed by the Commission against any person who:

a. Is required but fails to apply for or to secure a permit required by G.S. 113A-122, or who violates or fails to act in accordance with the terms, conditions, or requirements of such permit.

b. Fails to file, submit, or make available, as the case may be, any documents, data or reports required by the Commission pursuant to this Article.

c. Refuses access to the Commission or its duly designated representative, who has sufficiently identified himself by displaying official credentials, to any premises, not including any occupied dwelling house or curtilage, for the purpose of conducting any investigations provided for in this Article.

d. Violates any duly adopted regulation of the Commission implementing the provisions of this Article. Provided, however, that this paragraph d shall not apply to regulations relating to minor developments.

(2) If any action or failure to act for which a penalty may be assessed under this subsection is willful, the Commission may assess a penalty not to exceed one thousand dollars ($1,000) for each separate violation, after the first assessment, provided, however, no penalty shall be imposed under this subsection pending court review of the first assessment, if appealed pursuant to subdivision (3).

(3) The Commission may assess the penalties provided for in this subsection. When the Commission proposes to assess a penalty, it shall notify the person whom it proposes to assess by registered or certified mail of the proposal to assess a penalty, and the notice shall specify the reason for assessment and the date of the proposed hearing when assessment is to be determined. The hearing shall be no sooner than 15 days after the mailing of notice of the proposed assessment. Any hearing shall be based upon competent evidence, and the person the Commission proposes to assess shall be allowed to present evidence, and the hearing shall be reported. The person assessed may apply to the superior court of the county where such person resides for review of the hearing and assessment and the scope of the court's review of the Commission's action (which shall include a review of the amount of the assessment), shall be as provided in G.S. 143-315. If the person assessed fails to pay the amount of the assessment to the Department of Natural and Economic Resources within 30 days after receipt of notice, or such longer period, not to exceed 180 days, as the Commission may specify, the Commission may institute a civil action in the superior court of the county in which the violation occurred or, in the discretion of the Commission in the superior court of the county in which the person assessed resides or has his or its principal place of business, to recover the amount of the assessment. In any such civil action, the scope of the court's review of the Commission's action (which shall include a review of the amount of the assessment), shall be as provided in G.S. 143-315.

(4) In determining the amount of the penalty the Commission shall consider the degree and extent of harm caused by the violation and the cost of rectifying the damage. (1973, c. 1284, s. 1.)

§ 113A-127. Coordination with the federal government. — All State agencies shall keep informed of federal and interstate agency plans, activities, and procedures within their area of expertise that affect the coastal area. Where federal or interstate agency plans, activities or procedures conflict with State policies, all reasonable steps shall be taken by the State to preserve the integrity of its policies. (1973, c. 1284, s. 1.)

§ 113A-128. Protection of landowners' rights. — Nothing in this Article authorizes any governmental agency to adopt a rule or regulation or issue any order that constitutes a taking of property in violation of the Constitution of this State or of the United States. (1973, c. 1284, s. 1.)

§§ 113A-129 to 113A-134: Reserved for future codification purposes.

ARTICLE 8.

North Carolina Land Conservancy Corporation.

§ 113A-135. Creation. — (a) There is hereby created a body politic and corporate to be known as the "North Carolina Land Conservancy Corporation."

(b) This Corporation is a nonprofit State body corporate. The assets of the Corporation shall be the property of the State of North Carolina. No profits or assets of the Corporation shall inure to the benefit of any member of the board of trustees. (1973, c. 1405, ss. 1, 8.)

§ 113A-136. Legislative findings and purposes. — The General Assembly finds and declares that there is a public purpose and interest in acquiring and developing certain lands of the State in their natural and unaltered condition which are of value to the citizens of the State as sources of recreation, solitude, and as reminders of our natural and cultural heritage and in acquiring other lands and property, which may be of great benefit to State government and to the public at large.

The General Assembly further finds that the State lacks a mechanism that permits maximum flexibility in land acquisition. Thus, the State is often unable to purchase land at public auction, foreclosures, estate settlements, commercial offerings, private offerings, or other types of forced or rapid sale. The General Assembly also finds that the State lacks a mechanism that will permit it to move quickly when desirable tracts become available. Such delays in acquiring valuable land mean that when lands are ultimately purchased the price is generally greater than the initial asking price.

Therefore, the General Assembly declares that a mechanism to accomplish the aforestated public purpose should be established and sanctioned by the General Assembly of North Carolina and that such action is in the public interest. (1973, c. 1405, s. 2.)

§ 113A-137. Board of trustees. — The board of trustees of the North Carolina Land Conservancy Corporation, hereinafter referred to as the trustees, shall be composed of and governed by nine members. The Governor shall appoint five trustees of the Corporation who shall be residents of the State and who may hold other public offices. The Speaker of the House of Representatives shall appoint two trustees of the Corporation from the House of Representatives, and the Lieutenant Governor shall appoint two trustees of the Corporation from the Senate, who shall serve as trustees during their term of office, or until their successor is duly appointed and qualified. The State Treasurer, the Secretary of Administration, and the Secretary of Natural and Economic Resources, or their designees, shall be ex officio nonvoting trustees.

Insofar as possible the voting trustees should come from different regions of the State. The Governor shall appoint one trustee of the Corporation for a

one-year term, two of the trustees of the Corporation for a two-year term, and two of the trustees of the Corporation for a three-year term, as designated by the Governor, and until their successors shall be duly appointed and qualified. The successor of each such member shall be appointed for a term of four years and until his successor shall be duly appointed and qualified, except that any person appointed to fill a vacancy shall serve only for the unexpired term. Any member of the board of trustees shall be eligible for reappointment. Each member of the board of trustees appointed by the Governor may be removed by the Governor for misfeasance, malfeasance or willful neglect of duty after reasonable notice and a public hearing, unless the same are in writing expressly waived. Each trustee of the Corporation appointed by the Governor before entering upon his duty shall take an oath to administer the duties of his office faithfully and impartially and a record of such oath shall be filed in the office of the Secretary of State. The Governor shall designate a member of the board of trustees to serve as chairman. The term of the chairman of the board of trustees shall extend for a period of one year. The trustees shall annually elect one of its members as vice-chairman. The Secretary of Administration, or his designee, shall serve as Executive Director and Secretary to the Corporation.

Five members of the board of trustees shall constitute a quorum and the affirmative vote of a majority of the members present at a duly called meeting shall be necessary for any action taken by the trustees, except adjournment. Trustees shall receive no compensation for their services, but shall be entitled to receive, from the funds of the Corporation, for attendance at meetings of the Corporation or any committee thereof, and for other services for the Corporation, reimbursement for such actual expenses as may be incurred for travel and subsistence in the performance of official duties and, only as to members appointed by the Governor, such per diem as is allowed by law for members of other State boards, commissions, and committees. (1973, c. 1405, s. 3.)

§ 113A-138. The Executive Director. — The Executive Director shall administer, manage, and direct the affairs and business of the Corporation, subject to the policies, control, and direction of the members of the Corporation. The Secretary of the Corporation shall keep a record of the proceedings of the Corporation and shall be custodian of all books, documents, and papers filed with the Corporation, the minute book or journal of the Corporation and its official seal. He shall have authority to cause copies to be made of all minutes and other records and documents of the Corporation, and to give certificates under the official seal of the Corporation to the effect that such copies are true copies and all persons dealing with the Corporation may rely on such certificates. All records and documents will be subject to audit by the State Auditor. (1973, c. 1405, s. 4.)

§ 113A-139. Powers of the board of trustees. — The Corporation shall have all of the powers necessary or convenient to carry out and effectuate the purposes and provisions of this Article, including, but without limitation, the foregoing powers:

(1) To adopt an official seal and alter the same at its pleasure;

(2) To adopt bylaws for the regulation of its affairs and the conduct of its business and to prescribe rules, regulations, and policies in connection with the performance of its functions and duties;

(3) To maintain an office in the City of Raleigh;

(4) To collect and pay reasonable fees and charges in connection with making, purchasing and servicing its loans, notes, bonds, commitments and other evidence of indebtedness;

(5) To procure insurance against any loss in connection with its operations in such amounts, and from such insurers, as it may deem necessary or desirable;

(6) To solicit financial support from various private sources within and without the State of North Carolina;

(7) To make and execute agreements, contracts, and other instruments necessary or convenient in the exercise of the powers and functions of the Corporation under this Article, including contracts with any firm, person, corporation, governmental agency or other entity and each and any North Carolina governmental agency is hereby authorized to enter into contracts and otherwise cooperate with the Corporation to facilitate the purpose of the Article;

(8) To receive, administer and comply with the conditions and requirements respecting any appropriation, loan, gift, grant, bond issue, or donation of any property or money;

(9) To cooperate and participate with any nonprofit conservation organizations whose principal purpose is the protection and preservation of natural areas, in projects and activities of mutual interest and furtherance of the foregoing purposes and objects;

(10) To sue and be sued in its own name, plead and be impleaded;

(11) To preserve or aid in the preservation of all types of natural areas, features, objects, flora and fauna and biotic communities;

(12) To buy, own, sell, convey, assign, mortgage or lease any interest in real estate, including but not limited to fee simple interest and life estates, and personal property. (1973, c. 1405, s. 5.)

§ 113A-140. Restrictions on purchase and sale of property. — No property may be sold to or purchased from a member of the board of trustees, nor from the spouse, descendant, parent, partner of a trustee; nor from any other person of closer kin than first cousin of a trustee; nor from any firm, corporation, partnership, trust, or other business in which a trustee, his spouse, his descendants, his parents, his partners, or any other person of closer kin than first cousin of a trustee, has a financial interest of whatever kind. (1973, c. 1405, s. 6.)

§ 113A-141. Sale of assets to State of North Carolina. — The purpose of the Corporation is to acquire land for eventual use by the State of North Carolina. To this end, the Corporation shall offer to sell any assets it acquires to the State of North Carolina, and its agencies, at the same price at which such lands were purchased by the Corporation plus all reasonable and necessary expenses of acquisition. (1973, c. 1405, s. 7.)

§ 113A-142. Procedure for appropriation of State funds. — The Corporation may not use appropriated State funds to purchase real property, unless the Corporation shall have first obtained the approval of the Department of Administration, and the Governor and Council of State, in the manner provided in Chapter 146 of the General Statutes of North Carolina. (1973, c. 1405, s. 9.)

§ 113A-143. Approval of Council of State required. — No land shall be purchased, leased, sold, assigned, or mortgaged and no options shall be taken on any land by the Corporation without the prior approval of the Council of State. (1973, c. 1405, s. 10.)

§§ 113A-144 to 113A-149: Reserved for future codification purposes.

Article 9.

Land Policy Act.

§ 113A-150. Short title. — This Article shall be known as the Land Policy Act of 1974. (1973, c. 1306, s. 1.)

Editor's Note. — Session Laws 1973, c. 1306, s. 3, contains a severability clause.

§ 113A-151. Findings, intent and purpose. — (a) Findings. — The General Assembly hereby finds that:

(1) The land of North Carolina is a resource basic to the welfare of her people.

(2) A lack of coordination of governmental action; a lack of clearly stated, sound, and widely understood guidelines for planning; and a lack of systematic collection, classification, and utilization of information regarding the land resource have led to inconsistencies in policy and inadequacies in planning for the present and future uses of the land resource.

(3) Governmental agencies responsible for controlling land use and private and public users of the land resource are often unable to independently develop guidelines for land-use practices which provide adequate and meaningful provision for future demands on the land resource, while allowing current needs to be met.

(4) Systematic and sound decisions as to the location and nature of major public investments in key facilities cannot be made without a comprehensive State policy regarding the land resource.

(5) Those affected by State land-use policy and decisions must be given an opportunity for full participation in the policy- and decision-making process. Such a process must allow for the final implementation of policy by local governments. The State should take whatever steps necessary to encourage and assist local governments in meeting their obligation to control current uses and plan for future uses of the land resource.

(b) Intent and Purpose. — The General Assembly declares that it is the intent of this Article to undertake the continuing development and implementation of a State land-use policy, incorporating environmental, esthetic, economic, social, and other factors so as to promote the public interest, to preserve and enhance environmental quality, to protect areas of natural beauty and historic sites, to encourage beneficial economic development, and to protect and promote the public health, safety, and welfare. Such policy shall serve as a guide for decision-making in State and federally assisted programs which affect land use, and shall provide a framework for the development of land-use policies and programs by local governments. It is the purpose of this Article to:

(1) Promote patterns of land use which are in accord with a State land-use policy which encourages the wise and balanced use of the State's resources;

(2) Establish a State policy to give local governments guidance and assistance in the establishment and implementation of local land planning and management programs so as to effectively meet their responsibilities for economically and environmentally sound land-use management;

(3) Establish a State land-use policy which seeks to provide essential public services equitably to all persons within the State and to assure that citizens shall have, consistent with sound principles of land resource

use, maximum freedom and opportunity to live and conduct their activities in locations of their personal choice;

(4) Condition the distribution of certain federal and State funds on meeting reasonable and flexible State requirements for basic land planning; such conditions to include a clear statement of the State's authority and responsibility for review of planning and management by local governments;

(5) Develop and maintain coordination of all State programs having a land-use impact, including joint planning and management of State lands with adjacent nonstate lands, so as to ensure consistency with the purposes of this Article;

(6) Promote the development of systematic methods for the exchange of land-use, environmental, economic, and social information among all levels of government, and among agencies at all levels of government. (1973, c. 1306, s. 1.)

§ 113A-152. Definitions. — Unless the context otherwise requires, the following terms as used in this Article are defined as follows:

(1) "Areas of environmental concern" means: those areas of this State where uncontrolled development, unregulated use, or other man-related activities could result in major or irreversible damage to important environmental, historic, cultural, scientific or scenic values, or natural systems or processes which are of more than local significance, or could unreasonably endanger life or property as a result of natural hazards, or could result in loss of continued long-range productivity in renewable resource areas.

(2) "Principal officer" means the duly appointed or elected public official in responsible charge of a principal department of State government.

(3) "Key facilities" means public facilities which tend to induce development and urbanization of more than local impact and includes, but is not limited to, major facilities for the development, generation, and transmission of energy, for communication, and for transportation.

(4) "Local government" means any county, incorporated village, town, or city, or any combination of counties, incorporated villages, towns, and cities, acting through a joint program pursuant to the provisions of this Article.

(5) "New communities and large-scale developments" means private development which, because of its magnitude or the magnitude of its effect on the surrounding environment, is likely to present issues of more than local significance.

(6) "Project of regional impact" means land use, public development, and private development on government or nongovernmental lands for which there is a demonstrable impact affecting the interests of constituents of more than one local unit of government.

(7) "Region" or "regional" means or refers to one or more of the official planning regions established pursuant to the laws of this State. (1973, c. 1306, s. 1.)

§ 113A-153. North Carolina Land Policy Council. — (a) Established. — The General Assembly hereby establishes a council, advisory to the Governor, to be designated the North Carolina Land Policy Council, hereafter designated "the Council."

(b) Composition and Staff. —

(1) The Council shall consist of 14 principal members, designated as follows:

a. Eight members shall be the principal officers of the State Departments of

1. Administration

2. Agriculture
3. Cultural Resources
4. Commerce
5. Natural and Economic Resources
6. Revenue
7. Human Resources
8. Transportation.

b. Two members shall be the Lieutenant Governor and a member of the Senate selected by the Lieutenant Governor.

c. Two members shall be the Speaker of the House of Representatives and a member of the House selected by the Speaker.

d. One member shall be an elected official selected by the North Carolina League of Municipalities and appointed by the Governor.

e. One member shall be an elected official selected by the North Carolina Association of County Commissioners and appointed by the Governor.

(2) Only principal members shall have a vote on matters before the Council, but an alternate appointed by a principal member may participate fully in discussion and deliberations.

(3) The Council shall be housed administratively in the Department of Administration, with the Secretary of Administration as chairman, and with such other officers and procedures as the Council deems necessary for the proper exercise of its responsibilities.

(4) Staff services to the Council shall be provided primarily by the Office of State Planning, and, in addition, all departments of State government shall furnish personnel, information and research capability as may be required by the Council in the exercise of its responsibilities.

(c) Duties. —

(1) To assemble and analyze significant existing laws, policies and programs in State and local government as they pertain to or have substantial effect upon the use, management, development or conservation of all lands and waters, public and private, within the State of North Carolina.

(2) To define and cause to be prepared and periodically revised, a system of information and data concerning the land resources of the entire State, including, but not limited to, esthetic, economic, ecological, demographic, geologic, and physical conditions, both current and projected, as well as a continuing inventory of governmental and private needs and priorities for the use of land resources. All State agencies and units of local government including the register of deeds of each county shall make all pertinent data in their custody available to the Land Policy Council.

(3) To consider, and to consult with the federal government and relevant states on, the interstate aspects of land-use issues of more than intrastate concern.

(4) To prepare, and revise on a continuing basis, an inventory of public and private institutional and financial resources available for land-use planning and management within the State and of State and local programs, projects, and activities which have a regional impact of more than local concern.

(5) To establish a method for identifying new community and large-scale development and land-use projects with regional impact.

(6) To prepare, in consultation with concerned State agencies and other recognized authorities, principles and guidelines for the systematic identification of areas of environmental concern.

(7) To provide technical assistance and training programs for State and local agency personnel concerned with the development and implementation of State and local land-use programs.
(8) To establish a method for coordinating all State and local agency programs and services which significantly affect land use.
(9) To prepare, in conjunction with the Advisory Committee on Land Policy as described in G.S. 113A-154, and following procedures established by this Article, a State land policy as defined in G.S. 113A-155.
(10) To prepare, in conjunction with the Advisory Committee on Land Policy as described in G.S. 113A-154, and after consultation with the duly constituted and authorized planning agencies of local governments, and following procedures established by this Article, a State land policy and State land classification system as defined further in this Article.
(11) To prepare and recommend to the General Assembly a system of valuation of property for tax purposes related to the range of public services available or to be made available to properties designated in each of the several land classifications.

(d) Hearings. — The Council shall conduct such public hearings as it shall determine to be necessary or appropriate to the development of the State land policy and the State land classification system, provided only that there be no fewer than six such hearings held, two in each of the three major physiographic regions of the State. The Council shall give adequate public notice of each hearing at least 30 calendar days prior to the date of the hearing and shall consider all relevant statements and matters presented at hearings.

The Council shall designate the place and time of hearing and may adopt appropriate rules of procedure governing the conduct of the hearing, including the presentation of oral and written statements, and the form, content and method of giving notice of hearing.

(e) Acceptance and Administration of Federal or Private Funds. — The Department of Administration shall have power and authority to accept, receive and administer, on behalf of the Council, any funds, gifts, bequests, or other financial assistance given, granted or provided by legislative appropriation, or under any federal act or acts or from any federal agency, or from foundations or private sources, and to comply with all conditions and requirements necessary for the receipt, acceptance and use of said funds to the extent not inconsistent with the laws of this State and the rules and regulations thereunder pertaining to land-use planning and management. The Council shall have authority to formulate plans and projects for the approval of all funding agencies and institutions and to enter into such contracts and agreements as may be necessary for such purposes or to enter into joint agreements with any other agency or division of government for such purposes and to furnish such information as may be requested for any project or program related to or conducted pursuant to such plans and contracts. Such funds received by the Council pursuant to this provision shall be deposited in the State treasury to the account of the Council and shall remain in such account until used by the Council. (1973, c. 1306, s. 1.)

§ 113A-154. Advisory Committee on Land Policy. — (a) Established. — The General Assembly hereby establishes a committee, advisory to the Governor, to be known as the North Carolina Advisory Committee on Land Policy, hereinafter designated "the Committee."

(b) Composition and Staff. —

(1) The Committee shall consist of 24 members, selected as follows:
a. Twelve members shall be selected as follows:
1. Six shall be selected by the Governor from a list of elected officials recommended by the North Carolina Association of County Commissioners. Three of these members shall be

appointed for a term of two years, and three shall be appointed for a term of four years.

2. Six shall be selected by the Governor from a list of elected officials recommended by the North Carolina League of Municipalities. Three of these members shall be appointed for a term of two years, and three shall be appointed for a term of four years.

On expiration of initial terms, appointments shall be for a term of four years. In the event of a vacancy, the Governor shall appoint a successor of like qualifications to serve the remainder of the predecessor's term. No more than one of these members shall be appointed from any one of the 17 multicounty regions.

b. Twelve members shall be selected by the Governor to serve at his pleasure, and shall be representative of and actively engaged in:

1. The operation of a farm in the eastern part of the State as a principal source of livelihood.
2. The operation of a farm in the central part of the State as a principal source of livelihood.
3. The operation of a farm in the western part of the State as a principal source of livelihood.
4. Agribusiness.
5. Forestry, other than the forest products industry.
6. Land development.
7. Home building.
8. Manufacturing or extractive industry.
9. Parks and recreation management.
10. The tourist industry.
11. The environmental and/or health sciences.
12. Public interest organizations.

(2) The Governor shall designate one of the Committee members as chairman and one member as vice-chairman. The Committee may establish such other offices and procedures as it deems necessary for the proper exercise of its duties.

(3) The Committee shall be housed administratively in the Department of Administration, and staff services for the Committee shall be the same as that for the Council.

(c) Duties. — The Committee may divide itself into those subcommittees as necessary to:

(1) Advise the Council on alternative policies and management techniques applicable to various land-use problems in the State.

(2) Assist the Council in securing full public participation in the process of determining State land policy through such procedures as open dissemination of proposals and alternatives, opportunity for public comments, information and education programs, open discussion of policy alternatives, and timely response to public comments.

(3) Assist and advise the Council in developing the State land classification system.

(4) To analyze, and advise the Council on, possible future problem areas in land-use practices in the State.

(5) To provide other assistance and advice requested by the Council. (1973, c. 1306, s. 1.)

§ 113A-155. State land policy. — (a) Content. — The State land policy of North Carolina shall consist of the following:

(1) Consistent, comprehensive, and coordinated principles, guidelines, and methods for the transaction of all matters and affairs by any agency of State or local government dealing with, or related to, the acquisition,

ownership, use, management, and disposition, in part or whole, of title or interests in state-owned and other public lands;

(2) A compilation of all appropriate State laws, appellate court decisions, and current administrative practices, policies and principles, as established by precedent or administrative order, when accepted and recognized as such by the Land Policy Council; and

(3) Principles, guidelines and methods regarding specific land-use and management problems identified by the Land Policy Council, which shall include, but not be limited to, the following:

a. Specific policies and principles for early acquisition of a reserve of lands to form a resource base from which needs for parklands, recreation sites, water reservoirs, key facilities, and other public needs may be met.

b. Specific policies and principles for the location, coordination, consolidation and joint use of utility rights-of-way, of whatever sort, whether above, below, or on the surface of the ground.

c. Specific policies regarding large-scale and special public projects and assemblage of land therefor.

d. Specific policies for determination and certification of areas of environmental concern.

e. Specific policies regarding new communities and large-scale developments on nongovernment lands.

f. Specific policies regarding projects of regional impact.

g. Other similar and related policies and directives as may be necessary to carry out the purpose of this Article.

(b) Effect. — Such policies, principles, directives and methods, when not inconsistent or in conflict with existing law or valid regulations promulgated pursuant thereto, shall guide and determine the administrative procedures, findings, decisions and objectives of all agencies of State and local government with regard to acquisition, management, and disposition of public lands and interests therein and the regulation of private lands involved in or affected by areas of environmental concern, new communities, large-scale developments and projects of regional impact.

(c) Procedures. —

(1) Within two years after July 1, 1974, the Council and Committee, working jointly and in consultation with elected and appointed officials of local government, shall prepare and present to the Governor recommendations for a State land policy and the legislative action needed to fully implement that policy.

(2) At the next scheduled session of the General Assembly after the Council and Committee have presented their recommendations, the Governor shall submit to the General Assembly a proposed State land policy and implementing legislation. (1973, c. 1306, s. 1.)

§ 113A-156. State land classification system. — (a) Purpose. — Within two years following July 1, 1974, the North Carolina Land Policy Council shall develop a State land classification system, which shall include comprehensive guidelines and policies and a method for the classification of all lands in the State for the purposes of:

(1) Providing to State and local governmental agencies a system for achieving the stated purposes of this Article.

(2) Promoting the orderly growth and development of the State in a manner consistent with the wise use and conservation of the land resources.

(3) Assuring that the use and development of land in areas of environmental concern within the State is not inconsistent with the State land policy.

(4) Assuring that the use of land for key facilities, new communities, and large-scale developments, or in areas which are or may be impacted by

key facilities, new communities, and large-scale developments, is not inconsistent with the State land policy.

(b) Criteria for Classification. — The Council shall develop and adopt as a part of the classification system no fewer than four nor more than eight classifications which recognize all lands as a basic social and natural resource and which provide for the full range of private and public purposes in the use and conservation of the land resource. Emphasis shall be given to a harmonious relationship among the use potentials of the land, the physical and fiscal feasibility of providing necessary public services, and other facilities and social services. Areas of environmental concern, key facilities, projects of regional impact, new communities, and large-scale developments shall be recognized and made a part of the land classification system in order to further the stated purposes of this Article.

(c) Basis for Land Classification. — Full consideration shall be given, but shall not be limited to, the following aspects and characteristics of the lands of the State:

(1) Topographic features such as land elevations and gradients.
(2) Surface and underground waters, natural or artificial.
(3) Geological, chemical, mineral and physical characteristics of the land.
(4) The existing or potential utility of lands and sites having intrinsic historic, ecological, recreational, scenic or esthetic values or virtues.
(5) The availability or potential availability of public services, including key facilities, health, education, and other community facilities and social services.
(6) Areas of environmental concern, existing or potential key facilities, projects of regional impact, new communities, and large-scale development.

(d) Content. — The State land classification system shall include, but specifically is not limited to, the following:

(1) Concise and explicit descriptions of each of the classification categories.
(2) Guidelines and procedures for the preparation of official land-use plans by the land-planning agencies of local government, including a procedure for review by an appropriate State agency for sufficiency and consistency with the provisions of this Article, and a procedure for assembling local plans into regional plans.
(3) Rules and procedures for land reclassification together with an appellate procedure for property owners and other affected individuals, including officers of any level of government.

(e) Procedures. — No later than two years from July 1, 1974, the following actions shall be accomplished:

(1) The Council shall prepare, and, with the concurrence of the Governor, submit to duly constituted official planning agencies designated to represent each of the local governments in the State, a proposal for adoption of a land classification system consistent with the provisions of this Article. Such a proposal shall include:
   a. Guidelines for the implementation of the land classification system by local governments.
   b. Procedures to meet a goal of complete implementation and application of the land classification system to all lands within the State by January 1, 1979.
   c. Recommendations for legislative action to establish any necessary administrative authority within State government for the proper and uniform administration of the land classification system throughout the State.

d. Recommendations for the maximum degree of participation in land-use planning and land classification by the planning agencies duly constituted and authorized by local governments.

e. Recommendations for any additional legislative action needed to assist and support local governments and State agencies in achieving more effective plans for the growth and development of the State, and the conservation and management of its land resources.

(2) The designated planning agencies shall be allowed 90 calendar days to review the proposal and to submit comments to the Council. The Council shall give full consideration to all comments, particularly suggested revisions, and shall incorporate those revisions suggested by a majority of the planning agencies submitting comments into an amended proposal which shall be transmitted to the Governor for submission to the General Assembly at its next scheduled session, for legislative action necessary for the adoption of the land classification system and the implementation of that system at the county level. (1973, c. 1306, s. 1.)

§ 113A-157. Compensation of Council members. — Members of the Land Policy Council or the Advisory Committee on Land Policy who are not otherwise State employees shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5. (1973, c. 1306, s. 4.)

§ 113A-158. Protection of rights. — Nothing in this Article authorizes any governmental agency to adopt a rule or regulation or issue any order that constitutes a taking of property in violation of the Constitution of this State or of the United States, without payment of full compensation. (1973, c. 1306, s. 5.)

§ 113A-159. Interpretation. — It is the intention of the General Assembly that this Article be interpreted consistently with, and administered in coordination with, the Coastal Area Management Act of 1974. (1973,c. 1306, s. 6.)

Chapter 114.

Department of Justice.

Article 1.

Attorney General.

Sec.
114-1. Creation of Department of Justice under supervision of Attorney General.
114-2. Duties.
114-3. To devote whole time to duties.
114-4. Assistants; compensation; assignments.
114-4.1. [Repealed.]
114-4.2. Assistant attorneys general and other attorneys to assist Department of Transportation.
114-4.2A. Assistant attorney general assigned to State Insurance Department.
114-4.3. [Repealed.]
114-4.4. Deputy attorneys general.
114-5. Additional clerical help.
114-6. Duties of Attorney General as to civil litigation.
114-7. Salary of Attorney General.
114-8. [Repealed.]

Article 2.

Division of Legislative Drafting and Codification of Statutes.

114-9. Creation of Division; powers and duties.
114-9.1. Revisor of Statutes.

Article 3.

Division of Criminal Statistics.

114-10. Division of Criminal Statistics.
114-10.1. Police Information Network.
Sec.
114-11, 114-11.1. [Repealed.]
114-11.2 to 114-11.5. [Reserved.]

Article 3A.

Special Prosecution Division.

114-11.6. Division established; duties.

Article 4.

State Bureau of Investigation.

114-12. Bureau of Investigation created; powers and duties.
114-13. Director of the Bureau; personnel.
114-14. General powers and duties of Director and assistants.
114-14.1. Transfer of personnel.
114-15. Investigations of lynchings, election frauds, etc.; services subject to call of Governor; witness fees and mileage for Director and assistants.
114-16. Laboratory and clinical facilities; employment of criminologists; services of scientists, etc., employed by State; radio system.
114-17. Cooperation of local enforcement officers.
114-17.1. Cooperation of Department of Motor Vehicles.
114-18. Governor authorized to transfer activities of Central Prison Identification Bureau to the new Bureau; photographing and fingerprinting records.
114-19. Criminal statistics.

Article 1.

Attorney General.

§ 114-1. Creation of Department of Justice under supervision of Attorney General. — There is hereby created a Department of Justice which shall be under the supervision and direction of the Attorney General, as authorized by Article III, Sec. 7, of the Constitution of North Carolina. (1939, c. 315, s. 1; 1973, c. 702, s. 1.)

Editor's Note. — The 1973 amendment changed the reference to the Constitution from Article III, § 18, to Article III, § 7.

For comment on this enactment, see 17 N.C.L. Rev. 375.

§ 114-2. Duties. — It shall be the duty of the Attorney General:

(1) To defend all actions in the appellate division in which the State shall be interested, or a party, and to appear for the State in any other court or tribúnal in any cause or matter, civil or criminal, in which the State may be a party or interested.

(2) To represent all State departments, agencies, institutions, commissions, bureaus or other organized activities of the State which receive support in whole or in part from the State.
(3) Repealed by Session Laws 1973, c. 702, s. 2.
(4) To consult with and advise the solicitors, when requested by them, in all matters pertaining to the duties of their office.
(5) To give, when required, his opinion upon all questions of law submitted to him by the General Assembly, or by either branch thereof, or by the Governor, Auditor, Treasurer, or any other State officer.
(6) To pay all moneys received for debts due or penalties to the State immediately after the receipt thereof into the treasury.
(7) To compare the warrants drawn by the Auditor on the State treasury with the laws under which they purport to be drawn.
(8) a. To intervene, when he deems it to be advisable in the public interest, in proceedings before any courts, regulatory officers, agencies and bodies, both State and federal, in a representative capacity for and on behalf of the using and consuming public of this State. He shall also have the authority to institute and originate proceedings before such courts, officers, agencies or bodies and shall have authority to appear before agencies on behalf of the State and its agencies and citizens in all matters affecting the public interest.

b. Upon the institution of any proceeding before any State agency by application, petition or other pleading, formal or informal, the outcome of which will affect a substantial number of residents of North Carolina, such agency or agencies shall furnish the Attorney General with copies of all such applications, petitions and pleadings so filed, and, when the Attorney General deems it advisable in the public interest to intervene in such proceedings, he is authorized to file responsive pleadings and to appear before such agency either in a representative capacity in behalf of the using and consuming public of this State or in behalf of the State or any of its agencies. (1868-9, c. 270, s. 82; 1871-2, c. 112, s. 2; Code, s. 3363; 1893, c. 379; 1901, c. 744; Rev., s. 5380; C. S., s. 7694; 1931, c. 243, s. 5; 1933, c. 134, s. 8; 1941, c. 97; 1967, c. 691, s. 51; 1969, c. 535; 1973, c. 702, s. 2.)

Cross References. — As to actions by the Attorney General, see § 1-515. As to duty to bring actions for failure of charitable trust to file account, see § 36-20. As to duty in prosecuting violations of laws governing monopolies and trusts, see § 75-13.

Editor's Note. — The 1973 amendment deleted "also when requested by the Governor or either branch of the General Assembly" preceding "to appear" in subdivision (1), rewrote subdivision (2), and deleted former subdivision (3), which read: "To represent all State institutions, including the State's prison, whenever requested so to do by the official head of any such institution."

Directives as to Legal Duties of Constitutional Officers. — The Attorney General has no constitutional authority to issue a directive to any other constitutional officer concerning his legal duties. State v. Loesch, 237 N.C. 611, 75 S.E.2d 645 (1953).

Opinions Advisory Only. — An opinion of the Attorney General, given in the performance of his statutory duty under subdivision (5), is advisory only. Lawrence v. Shaw, 210 N.C. 352, 186 S.E. 504 (1936).

The responsibility for interpreting a tax statute is placed on the Commissioner of Revenue (now Secretary of Revenue) by § 105-264, and the Attorney General's opinion in regard thereto is advisory only, by virtue of former N.C. Const., Art. III, § 14, and this section. In re Virginia-Carolina Chem. Corp., 248 N.C. 531, 103 S.E.2d 823 (1958).

Advisory Duty as to Solicitors (Now District Attorneys). — The duty of the Attorney General as to the solicitors (now district attorneys) of the State is purely advisory. State v. Loesch, 237 N.C. 611, 75 S.E.2d 654 (1953).

Duties of Attorney General and Solicitor (Now District Attorney) as to Case on Appeal. — See State v. Hickman, 2 N.C. App. 627, 163 S.E.2d 632 (1968).

Applied in State ex rel. Commissioner of Ins. v. State ex rel. Attorney Gen., 16 N.C. App. 279, 192 S.E.2d 138 (1972); State ex rel. Commissioner of Ins. v. State ex rel. Attorney Gen., 19 N.C. App. 263, 198 S.E.2d 575 (1973).

Quoted in National Ass'n for Advancement of Colored People v. Eure, 245 N.C. 331, 95 S.E.2d 893 (1957).

§ 114-3. To devote whole time to duties. — The Attorney General shall devote his whole time to the duties of the office and shall not engage in the private practice of law. (1929, c. 1, s. 1.)

§ 114-4. Assistants; compensation; assignments. — The Attorney General shall be allowed to appoint from among his staff such number of assistant attorneys general as he shall deem advisable, and each of such assistant attorneys general shall be subject to all of the provisions of Chapter 126 of the General Statutes relating to the State Personnel System. Two assistant attorneys general shall be assigned to the State Department of Revenue. The other assistant attorneys general shall perform such duties as may be assigned by the Attorney General: Provided, however, the provisions of this section shall not be construed as preventing the Attorney General from assigning additional duties to the assistant attorneys general assigned to the State Department of Revenue. (1925, c. 207, s. 1; 1937, c. 357; 1945, c. 786; 1947, c. 182; 1967, c. 260, s. 1; 1973, c. 702, s. 3.)

Editor's Note. — The 1973 amendment substituted "from among his staff such number of assistant attorneys general as he shall deem advisable" for "five assistant attorneys general" in the first sentence.

§ 114-4.1: Repealed by Session Laws 1973, c. 702, s. 4.

§ 114-4.2. Assistant attorneys general and other attorneys to assist Department of Transportation. — The Attorney General is authorized to appoint from among his staff such assistant attorneys general and such other staff attorneys as he shall deem advisable to provide all legal assistance for the State highway functions of the Department of Transportation and Highway Safety, and such assistant attorneys general and other attorneys shall also perform such additional duties as may be assigned to them by the Attorney General, and shall otherwise be subject to all provisions of the statutes relating to assistant attorneys general and other staff attorneys. There shall be appropriated from the State Highway Fund such sum as may be necessary to pay the salaries of said assistant attorneys general and other attorneys and necessary secretaries. The Department of Transportation and Highway Safety shall provide adequate office space, equipment and supplies. (1957, c. 65, s. 9; 1965, c. 55, s. 16; c. 408, s. 1; 1973, c. 702, s. 5.)

Editor's Note. — The 1973 amendment rewrote this section.

§ 114-4.2A. Assistant attorney general assigned to State Insurance Department. — Such assistant attorneys general as are assigned to the Commissioner of Insurance and the State Insurance Department by the Attorney General shall perform such additional duties as may be assigned to them by the Attorney General, and shall otherwise be subject to all provisions of the statutes relating to assistant attorneys general. (1967, c. 1115, s. 1; 1973, c. 702, s. 6.)

Editor's Note. — The 1973 amendment rewrote this section. The amendatory act purported to amend "G.S. 114-4.2(a)," but has been construed to refer to this section.

Session Laws 1973, c. 702, s. 9, provides: "It is not the intention of this act to amend G.S. 62-21, or any other provision of Chapter 62 of the General Statutes relating to representation of the Utilities Commission."

§ 114-4.3: Repealed by Session Laws 1973, c. 702, s. 7.

§ 114-4.4. Deputy attorneys general. — The Attorney General is hereby authorized to designate from among his staff such deputy attorneys general as he shall deem advisable to perform such duties and undertake such responsibilities as he may direct. (1963, c. 355; 1973, c. 702, s. 8.)

Editor's Note. — The 1973 amendment substituted the language beginning "his staff" and ending "advisable" for "the assistant attorneys general authorized by this article not more than four (4) of such assistants." The amendment also substituted "he" for "the Attorney General" near the end of the section.

§ 114-5. Additional clerical help. — The Attorney General shall be allowed such additional clerical help as shall be necessary; the amount of such help and the salary therefor shall be fixed by the Budget Bureau and the Attorney General. (1925, c. 207, s. 2.)

Editor's Note. — All of the functions, property, records, etc., of the Budget Bureau have been transferred by § 143-344 to the Department of Administration.

§ 114-6. Duties of Attorney General as to civil litigation. — The Attorney General shall continue to perform all duties now required of his office by law and to exercise the duties now prescribed by law as to civil litigation affecting the State, or any agency or department thereof, and shall assign to the members of the staff all duties to be performed in connection with criminal prosecutions and civil litigation authorized by this Article or by existing laws. (1939, c. 315, ss. 7, 8.)

Quoted in National Ass'n for Advancement of Colored People v. Eure, 245 N.C. 331, 95 S.E.2d 893 (1957).

§ 114-7. Salary of Attorney General. — The Attorney General shall receive an annual salary of thirty-five thousand dollars ($35,000), payable monthly. (1929, c. 1, s. 2; 1947, c. 1043; 1949, c. 1278; 1953, c. 1, s. 2; 1957, c. 1; 1963, c. 1178, s. 3; 1967, c. 1130; c. 1237, s. 3; 1969, c. 1214, s. 3; 1971, c. 912, s. 3; 1973, c. 778, s. 3.)

Editor's Note. — The 1973 amendment increased the salary from $29,500 to $35,000.

§ 114-8: Repealed by Session Laws 1969, c. 44, s. 89.

ARTICLE 2.

Division of Legislative Drafting and Codification of Statutes.

§ 114-9. Creation of Division; powers and duties. — The Attorney General shall set up in the Department of Justice a division to be designated as the

Division of Legislative Drafting and Codification of Statutes. There shall be assigned to this Division by the Attorney General duties as follows:

(1) To prepare bills to be presented to the General Assembly at the request of the Governor, and the officials of the State and departments thereof, and members of the General Assembly, and to advise with said officials in connection therewith, and to advise with and assist counties, cities, and towns in the drafting of legislation to be submitted to the General Assembly.

(2) To supervise the recodification of all the statute law of North Carolina and supervise the keeping of such recodifications current by including therein all laws hereafter enacted by supplements thereto issued periodically, all of which recodifications and supplements shall be appropriately annotated.

(3) In order that the laws of North Carolina, as set out in the General Statutes of North Carolina, may be made and kept as simple, as clear, as concise and as complete as possible, and in order that the amount of construction and interpretation of the statutes required of the courts may be reduced to a minimum, it shall also be the duty of the Division of Legislative Drafting and Codification of Statutes to establish and maintain a system of continuous statute research and correction. To that end the Division shall:

a. Make a systematic study of the general statutes of the State, as set out in the General Statutes and as hereafter enacted by the General Assembly, for the purpose of ascertaining what ambiguities, conflicts, duplications and other imperfections of form and expression exist therein and how these defects may be corrected.

b. Consider such suggestions as may be submitted to the Division with respect to the existence of such defects and the proper correction thereof.

c. Prepare for submission to the General Assembly from time to time bills to correct such defects in the statutes as its research discloses. (1939, c. 315, s. 5; 1941, c. 35; 1943, c. 382.)

Editor's Note. — For note on responsibilities of Division, see 17 N.C.L. Rev. 376. For article on recodification of statutes, see 19 N.C.L. Rev. 25.

§ 114-9.1. Revisor of Statutes. — The member of the staff of the Attorney General who is assigned to perform the duties prescribed by G.S. 114-9(3) shall be known as the Revisor of Statutes and he shall be subject to all the provisions of Chapter 126 of the General Statutes relating to the State Personnel System. (1947, c. 114, s. 1; 1957, c. 541, s. 10; 1967, c. 260, s. 2.)

Editor's Note. — For comment on this section, see 25 N.C.L. Rev. 459.

ARTICLE 3.

Division of Criminal Statistics.

§ 114-10. Division of Criminal Statistics. — The Attorney General shall set up in the Department of Justice a division to be designated as the Division of Criminal Statistics. There shall be assigned to this Division by the Attorney General duties as follows:

(1) To collect and correlate information in criminal law administration, including crimes committed, arrests made, dispositions on preliminary hearings, prosecutions, convictions, acquittals, punishment, appeals,

together with the age, race, and sex of the offender, and such other information concerning crime and criminals as may appear significant or helpful. To correlate such information with the operations of agencies and institutions charged with the supervision of offenders on probation, in penal and correctional institutions, on parole and pardon, so as to show the volume, variety and tendencies of crime and criminals and the workings of successive links in the machinery set up for the administration of the criminal law in connection with the arrests, trial, punishment, probation, prison parole and pardon of all criminals in North Carolina.

(2) To collect, correlate, and maintain access to information that will assist in the performance of duties required in the administration of criminal justice throughout the State. This information may include, but is not limited to, motor vehicle registration, drivers' licenses, wanted and missing persons, stolen property, warrants, stolen vehicles, firearms registration, drugs, drug users and parole and probation histories. In performing this function, the Division may arrange to use information available in other agencies and units of State, local and federal government, but shall provide security measures to insure that such information shall be made available only to those whose duties, relating to the administration of justice, require such information.

(3) To make scientific study, analysis and comparison from the information so collected and correlated with similar information gathered by federal agencies, and to provide the Governor and the General Assembly with the information so collected biennially, or more often if required by the Governor.

(4) To perform all the duties heretofore imposed by law upon the Attorney General with respect to criminal statistics.

(5) To perform such other duties as may be from time to time prescribed by the Attorney General. (1939, c. 315, s. 2; 1955, c. 1257, ss. 1, 2; 1969, c. 1267, s. 1.)

§ 114-10.1. Police Information Network. — (a) The Division of Criminal Statistics is authorized to establish, devise, maintain and operate, under the control and supervision of the Attorney General, a system for receiving and disseminating to participating agencies information collected, maintained and correlated under authority of G.S. 114-10 of this Article. The system shall be known as the Police Information Network.

(b) The Attorney General is authorized to cooperate with the Department of Motor Vehicles, Department of Administration, Department of Correction and other State, local and federal agencies and organizations in carrying out the purpose and intent of this section, and to utilize, in cooperation with other State agencies and to the extent as may be practical, computers and related equipment as may be operated by other State agencies.

(c) The Attorney General, after consultation with participating agencies, shall adopt rules and regulations governing the organization and administration of the Police Information Network, including rules and regulations governing the types of information relating to the administration of criminal justice to be entered into the system, and who shall have access to such information. The Attorney General may call upon the Governor's Committee on Law and Order for advice and such other assistance that the Committee may be authorized to render. (1969, c. 1267, s. 2.)

State Government Reorganization. — The Police Information Network was transferred to the Department of Justice by § 143A-55, enacted by Session Laws 1971, c. 864.

§ 114-11: Repealed by Session Laws 1969, c. 1190, s. 57.

§ 114-11.1: Repealed by Session Laws 1965, c. 310, s. 4.

§§ 114-11.2 to 114-11.5: Reserved for future codification purposes.

ARTICLE 3A.

Special Prosecution Division.

§ 114-11.6. Division established; duties. — There is hereby established in the office of the Attorney General of North Carolina, a Special Prosecution Division. The attorneys assigned to this Division shall be available to prosecute or assist in the prosecution of criminal cases when requested to do so by a district attorney and the Attorney General approves. In addition, these attorneys assigned to this Division shall serve as legal advisers to the State Bureau of Investigation and the Police Information Network and perform any other duties assigned to them by the Attorney General. (1973, c. 47, s. 2; c. 813.)

Editor's Note. — Pursuant to Session Laws 1973, c. 47, s. 2, "district attorney" has been substituted for "solicitor" in this section as enacted by Session Laws 1973, c. 813.

ARTICLE 4.

State Bureau of Investigation.

§ 114-12. Bureau of Investigation created; powers and duties. — In order to secure a more effective administration of the criminal laws of the State, to prevent crime, and to procure the speedy apprehension of criminals, the Attorney General shall set up in the Department of Justice a division to be designated as the State Bureau of Investigation. The Division shall have charge of and administer the agencies and activities herein set up for the identification of criminals, for their apprehension, for the scientific analysis of evidence of crime, and investigation and preparation of evidence to be used in criminal courts; and the said Bureau shall have charge of investigation of criminal matters herein especially mentioned, and of such other crimes and criminal procedure as the Governor may direct. (1937, c. 349, s. 1; 1939, c. 315, s. 6.)

State Government Reorganization. — The State Bureau of Investigation was transferred to the Department of Justice by § 143A-51, enacted by Session Laws 1971, c. 864.

Cited in Chapman v. State, 4 N.C. App. 438, 166 S.E.2d 873 (1969); State v. Strickland, 5 N.C. App. 338, 168 S.E.2d 697 (1969).

§ 114-13. Director of the Bureau; personnel. — The Attorney General shall appoint a Director of the Bureau of Investigation, who shall serve at the will of the Attorney General, and whose salary shall be fixed by the Budget Bureau under G.S. 143-36 et seq. He may further appoint a sufficient number of assistants and stenographic and clerical help, who shall be competent and qualified to do the work of the Bureau. The salaries of such assistants shall be fixed by the Budget Bureau under G.S. 143-36 et seq. The salaries of clerical and stenographic help shall be the same as now provided for similar employees in other State departments and bureaus.

All the benefits, duties, authority and requirements of subsections (b), (c), (d), and (e) of G.S. 20-185 applicable to members and officers of the State Highway Patrol, shall be applicable to officers and special agents of the State Bureau of Investigation whose salaries are fixed as provided by law, and wherever in said subsections any duty, responsibility or authority is vested in the Commanding Officer of the State Highway Patrol or the Commissioner of Motor Vehicles,

such duty, responsibility, or authority is hereby vested in the Director of the State Bureau of Investigation. Wherever in said subsection[s] any benefits, duties, authority, or requirements are vested in, placed on, or extended to officers and members of the State Highway Patrol, such benefits, duties, authority and requirements are vested in, placed on, and extended to officers and special agents of the State Bureau of Investigation. (1937, c. 349, s. 4; 1939, c. 315, s. 6; 1955, c. 1185, s. 1.)

Editor's Note. — All of the functions, property, records, etc., of the Budget Bureau have been transferred by § 143-344 to the Department of Administration.

Section 143-36 et seq., referred to in the first paragraph, was repealed by Session Laws 1965, c. 640, s. 1. For present provisions as to the State Personnel System, see §§ 126-1 through 126-12.

§ 114-14. General powers and duties of Director and assistants. — The Director of the Bureau and his assistants are given the same power of arrest as is now vested in the sheriffs of the several counties, and their jurisdiction shall be statewide. The Director of the Bureau and his assistants shall, at the request of the Governor, give assistance to sheriffs, police officers, district attorneys, and judges when called upon by them and so directed. They shall also give assistance, when requested, to the office of the Department of Correction in the investigation of cases pending before the parole office and of complaints lodged against parolees, when so directed by the Governor. (1937, c. 349, s. 5; 1973, c. 47, s. 2; c. 1262, s. 10.)

Editor's Note. — The first 1973 amendment substituted "district attorneys" for "solicitors" in the second sentence.

The second 1973 amendment substituted "Department of Correction" for "Commissioner of Paroles" in the third sentence.

§ 114-14.1. Transfer of personnel. — The Director of the State Bureau of Investigation shall have authority to transfer members of the Bureau from one locality in the State to another as he may deem necessary. When any member of the State Bureau of Investigation is transferred from one point to another for the convenience of the State, or otherwise than upon the request of the employee, the Bureau shall be responsible for transporting the household goods, furniture, and personal effects of the employee and members of his household. (1955, c. 1185, s. 2.)

§ 114-15. Investigations of lynchings, election frauds, etc.; services subject to call of Governor; witness fees and mileage for Director and assistants. — The Bureau shall, through its Director and upon request of the Governor, investigate and prepare evidence in the event of any lynching or mob violence in the State; shall investigate all cases arising from frauds in connection with elections when requested to do so by the Board of Elections, and when so directed by the Governor. Such investigation, however, shall in nowise interfere with the power of the Attorney General to make such investigation as he is authorized to make under the laws of the State. The Bureau is authorized further, at the request of the Governor, to investigate cases of frauds arising under the Social Security Laws of the State, of violations of the gaming laws, and lottery laws, and matters of similar kind when called upon by the Governor so to do. In all such cases it shall be the duty of the Department to keep such records as may be necessary and to prepare evidence in the cases investigated, for the use of enforcement officers and for the trial of causes. The services of the Director of the Bureau, and of his assistants, may be required by the Governor in connection with the investigation of any crime committed anywhere in the State when called upon by the enforcement officers of the State, and when, in the judgment of the Governor, such services may be rendered with advantage

to the enforcement of the criminal law. The State Bureau of Investigation is hereby authorized to investigate without request the attempted arson, or arson, damage of, theft from, or theft of, or misuse of, any state-owned personal property, buildings, or other real property.

All records and evidence collected and compiled by the Director of the Bureau and his assistants shall not be considered public records within the meaning of G.S. 132-1, and following, of the General Statutes of North Carolina and may be made available to the public only upon an order of a court of competent jurisdiction. Provided that all records and evidence collected and compiled by the Director of the Bureau and his assistants shall, upon request, be made available to the district attorney of any district if the same concerns persons or investigations in his district.

In all cases where the cost is assessed against the defendant and paid by him, there shall be assessed in the bill of cost, mileage and witness fees to the Director and any of his assistants who are witnesses in cases arising in courts of this State. The fees so assessed, charged and collected shall be forwarded by the clerks of the court to the Treasurer of the State of North Carolina, and there credited to the Bureau of Identification and Investigation Fund. (1937, c. 349, s. 6; 1947, c. 280; 1965, c. 772; 1973, c. 47, s. 2.)

Editor's Note. — The 1973 amendment substituted "district attorney" for "solicitor" in the second paragraph.

For comment on the 1947 amendment, see 25 N.C.L. Rev. 403.

Right to Court Order Permitting Inspection of Records and Evidence. — This section gives to a defendant in a criminal action no unqualified right to have a court of competent jurisdiction enter an order permitting him an inspection of "all records and evidence collected and compiled" by the State Bureau of Investigation in a criminal case pending against him. State v. Goldberg, 261 N.C. 181, 134 S.E.2d 334 (1964).

§ 114-16. Laboratory and clinical facilities; employment of criminologists; services of scientists, etc., employed by State; radio system. — In the said Bureau there shall be provided laboratory facilities for the analysis of evidences of crime, including the determination of presence, quantity and character of poisons, the character of bloodstains, microscopic and other examination material associated with the commission of crime, examination and analysis of projectiles of ballistic imprints and records which might lead to the determination or identification of criminals, the examination and identification of fingerprints, and other evidence leading to the identification, apprehension, or conviction of criminals. A sufficient number of persons skilled in such matters shall be employed to render a reasonable service to the prosecuting officers of the State in the discharge of their duties. In the personnel of the Bureau shall be included a sufficient number of persons of training and skill in the investigation of crime and in the preparation of evidence as to be of service to local enforcement officers, under the direction of the Governor, in criminal matters of major importance.

The laboratory and clinical facilities of the institutions of the State, both educational and departmental, shall be made available to the Bureau, and scientists and doctors now working for the State through its institutions and departments may be called upon by the Governor to aid the Bureau in the evaluation, preparation, and preservation of evidence in which scientific methods are employed, and a reasonable fee may be allowed by the Governor for such service.

The State radio system shall be made available to the Bureau for use in its work. (1937, c. 349, s. 7.)

§ 114-17. Cooperation of local enforcement officers. — All local enforcement officers are hereby required to cooperate with the said Bureau, its officers and agents, as far as may be possible, in aid of such investigations and

arrest and apprehension of criminals as the outcome thereof. (1937, c. 349, s. 8.)

§ 114-17.1. Cooperation of Department of Motor Vehicles. — Notwithstanding any of the provisions of Chapter 20 of the North Carolina General Statutes, it shall be lawful for the North Carolina Commissioner of Motor Vehicles to cooperate with the Director of the North Carolina State Bureau of Investigation to the extent necessary to provide special agents of the North Carolina State Bureau of Investigation on special undercover assignments with motor vehicle operator's license and motor vehicle registration plates under assumed names using false or fictitious addresses. If such motor vehicle operator's license or motor vehicle registration plates are issued pursuant to this section, the Director of the North Carolina State Bureau of Investigation shall be responsible for the use thereof and shall upon request of the North Carolina Commissioner of Motor Vehicles immediately return such motor vehicle operator's license or motor vehicle registration plates for cancellation. (1971, c. 942.)

§ 114-18. Governor authorized to transfer activities of Central Prison Identification Bureau to the new Bureau; photographing and fingerprinting records. — The records and equipment of the Identification Bureau now established at Central Prison shall be made available to the said Bureau of Investigation, and the activities of the Identification Bureau now established at Central Prison may, in the future, if the Governor deem advisable, be carried on by the Bureau hereby established; except that the Bureau established by this Article shall have authority to make rules and regulations whereby the photographing and fingerprinting of persons confined in the Central Prison, or clearing through the Central Prison, or sentenced by any of the courts of this State to service upon the roads, may be taken and filed with the Bureau. (1937, c. 349, s. 2; 1939, c. 315, s. 6.)

§ 114-19. Criminal statistics. — It shall be the duty of the State Bureau of Investigation to receive and collect police information, to assist in locating, identifying, and keeping records of criminals in this State, and from other states, and to compare, classify, compile, publish, make available and disseminate any and all such information to the sheriffs, constables, police authorities, courts or any other officials of the State requiring such criminal identification, crime statistics and other information respecting crimes local and national, and to conduct surveys and studies for the purpose of determining so far as is possible the source of any criminal conspiracy, crime wave, movement or cooperative action on the part of the criminals, reporting such conditions, and to cooperate with all officials in detecting and preventing. (1965, c. 1049, s. 1; 1973, c. 1286, s. 19.)

Editor's Note. — The 1973 amendment, effective July 1, 1975, deleted the former first two paragraphs of the section, pertaining to the taking of fingerprints and photographs of suspects and convicts.

Session Laws 1973, c. 1286, s. 29, contains a severability clause.

Session Laws 1973, c. 1286, s. 31, provides:

"Sec. 31. This act becomes effective on July 1, 1975, and is applicable to all criminal proceedings begun on and after that date and each provision is applicable to criminal proceedings pending on that date to the extent practicable, except § 12 [§§ 15-176.3 through 15-176.5] of this act which becomes effective on July 1, 1974."

Opinions of Attorney General. — The Honorable Gilbert H. Burnett, District Court Judge, Fifth Judicial District, 40 N.C.A.G. 670 (1969).

Origin. — This section, which was enacted in 1965, has its origin in former § 148-79, which was originally enacted in 1925 and which was repealed in 1965 upon enactment of this section. Chapman v. State, 4 N.C. App. 438, 166 S.E.2d 873 (1969).

This section does not create a new rule of evidence. State v. Strickland, 276 N.C. 253, 173 S.E.2d 129 (1970).

This section is concerned with the compilation and preservation of statistics and records rather than the creation of a new rule of evidence. State

v. Strickland, 276 N.C. 253, 173 S.E.2d 129 (1970).

This section does not create an exclusionary rule of evidence. State v. Accor, 277 N.C. 65, 175 S.E.2d 583 (1970).

Taking of Fingerprints and Photographs of Persons Not Charged with Crime. — In view of the express finding that, at the time they were photographed, neither defendant was charged with the commission of any crime, this section neither authorized nor prohibited the taking of the fingerprints and photographs of defendants. State v. Accor, 277 N.C. 65, 175 S.E.2d 583 (1970).

Admissibility of Prints Taken by Arresting Officer. — This section does not prohibit the use in evidence on trial of the prints of defendant taken by the arresting officer, even though there is no factual evidence to establish that such fingerprinting was authorized by the sheriff or chief of police. Chapman v. State, 4 N.C. App. 438, 166 S.E.2d 873 (1969).

Not a Limitation on Authority to Fingerprint Misdemeanants. — See opinion of Attorney General to Mr. G. Patrick Hunter, Jr., Charlotte Police Attorney, 40 N.C.A.G. 173 (1970).

Quoted in Wheeler v. Goodman, 306 F. Supp. 58 (W.D.N.C. 1969).

Chapter 115.

Elementary and Secondary Education.

SUBCHAPTER I. GENERAL PROVISIONS.

Article 1.

State Plan for Public Education.

Sec.
115-1. General and uniform system of schools.
115-1.1. State policy.
115-2. Administration of school system vested in State Board of Education.
115-3. Educational districts.
115-4. Administrative units classified.
115-5. School system defined.
115-6. Schools classified and defined.
115-7. Term "district" defined.
115-8. Officials defined.
115-9. Tax-levying authorities defined.

SUBCHAPTER II. ADMINISTRATIVE ORGANIZATION.

Article 2.

The State Board of Education.

115-10. Organization of Board.
115-11. Powers and duties generally.
115-11.1 Authority to expend funds for transportation of certain children.
115-11.2 to 115-11.5. [Reserved.]

Article 2A.

The Council on Educational Services For Exceptional Children.

115-11.6. Council established.
115-11.7. Appointment and terms of members; travel allowances and per diem.
115-11.8. Duties.
115-11.9. Meetings; secretarial and clerical staff; supplies.

Article 3.

State Superintendent of Public Instruction.

115-12. Chief administrative officer of the State Board of Education.
115-13. Office and salary.
115-14. Administrative duties.
115-15. Duties as secretary to State Board of Education.

Article 4.

Powers and Duties of Controller.

Sec.
115-16. Controller to be administrator of fiscal affairs.
115-17. Duties of controller defined.

Article 5.

County and City Boards of Education.

115-18. How constituted.
115-19. How elected.
115-20. County board of elections to provide for elections.
115-21. City board of education, how constituted; how to employ principals, teachers, janitors and maids.
115-22. Members to qualify.
115-23. Vacancies in nominations for membership on county boards.
115-24. Vacancies in office.
115-25. Eligibility for board membership; holding other offices.
115-26. Organization of board.
115-27. Board a body corporate.
115-28. Meetings of the board.
115-29. Compensation of board members.
115-30. Removal of member of county or city board.
115-31. Suits and actions.
115-32. Power to subpoena and to punish for contempt.
115-33. Witness failing to appear; misdemeanor.
115-34. Appeals to board of education and to superior court.
115-35. Powers and duties of county and city boards generally.
115-36. Length of school day, school month, and school term.
115-37. Subjects taught in public schools.
115-38. [Repealed.]
115-39. Requirements and limitations of board in selecting superintendent and his term of office.
115-40. Office, equipment, and clerical assistants for superintendent.
115-41. Prescribing duties of superintendent not in conflict with law.
115-42. Removal of county or city superintendent.
115-43. Removal of committeemen for cause.

Sec.
115-44. Assistant superintendent and supervisors.
115-45. Authority of board over teachers, supervisors and principals.
115-46. Providing for training of teachers.
115-47. Pay of teachers and other school employees.
115-48. Tax-levying authorities authorized to borrow and boards of education limited in expenditures.
115-49. Salary schedule for teachers.
115-50. Authority for salary vouchers.
115-51. School food services provided by county and city boards of education.
115-52. Purchase of equipment and supplies.
115-53. Liability insurance and waiver of immunity as to torts of agents, etc.

Article 6.

Powers and Duties of Superintendents.

115-54. Residence, oath of office, and salary of superintendent.
115-55. Vacancies in office of superintendent.
115-56. Duties of superintendent as secretary to board of education.
115-57. Duties of superintendents toward school personnel.
115-58. Duties with respect to election of principals, teachers and other personnel.
115-59. School organization statement and allocation of instructional personnel.
115-60. Superintendents shall keep proper financial records.
115-61. County superintendents shall keep record of local taxes.
115-62. Record of fines, forfeitures and penalties.
115-63. Superintendents must furnish boundaries of special taxing districts.
115-64. Disbursement of local funds.
115-65. Superintendent shall not pay teacher without contract.
115-66. When superintendent may withhold pay of teachers.
115-67. [Repealed.]
115-68. City superintendents, powers, duties and responsibilities.

Article 7.

School Committees — Their Duties and Powers.

115-69. Eligibility and oath of office; holding other offices.
115-70. Appointment; number of members; terms; vacancies; advisory council.
115-71. Organization of school committee; meetings.
115-72. How to employ principals, teachers, janitors and maids.
115-73. Committee's responsibility as to school property.

SUBCHAPTER III. SCHOOL DISTRICT ORGANIZATION.

Article 8.

Creating and Consolidating School Districts and School Administrative Units.

Sec.
115-74. Creation and modification of school districts by State Board of Education.
115-74.1. Consolidation and merger of county and city school administrative units located in the same county.
115-74.2. Merger of two or more adjoining county school administrative units.
115-75. Districts formed of portions of contiguous counties.
115-76. Consolidation of districts and discontinuance of schools.
115-77. Enlarging tax districts and city units by permanently attaching contiguous property.

SUBCHAPTER IV. REVENUE FOR THE PUBLIC SCHOOLS.

Article 9.

County and City Boards of Education and Budgets.

115-78. Objects of expenditure for operation of public schools.
115-79. Objects of expenditure included in State budget.
115-80. Rules for preparation of school budgets.
115-80.1 to 115-80.5. [Repealed.]
115-81. Tax-levying authorities must report action on budgets.
115-82. Copies of budgets to be filed with State Board of Education.
115-83. Operating budget.
115-84. Provision for disbursement of State funds.
115-85. Fidelity bonds.
115-86. Apportionment of local funds among administrative units.
115-87. Procedure in cases of disagreement or refusal of tax-levying authorities to levy taxes.
115-88. Jury trial as to amount needed to maintain schools.
115-89. Operation of county and city school budget.
115-90. How school funds are paid out.

Article 10.

The Treasurer; His Powers, Duties and Responsibilities in Disbursing School Funds.

115-91. Treasurer of school funds.

Sec.
115-92. Action against treasurer to recover funds.
115-93. Annual reports of treasurer.
115-94. Duties of treasurer on expiration of his term.
115-95. Penalty for failure to report and to perform other duties.
115-96. Speculating in teachers' salary vouchers.
115-97. Audit of school funds.
115-98. Fines, forfeitures and penalties.
115-99. [Repealed.]
115-100. Miscellaneous funds.

Article 11.

Loans from State Literary Fund.

115-101. Loans by State Board from State Literary Fund.
115-102. Terms of loans.
115-103. How secured and paid.
115-104. Loans by county board to school districts.
115-105. State Board of Education authorized to accept funding or refunding bonds of counties for loans; approval by Local Government Commission.
115-106. Issuance of bonds as part of general refunding plan.
115-107. Validating certain funding and refunding notes of counties.
115-108. Special appropriation from fund.
115-108.1. Loans not granted in accordance with § 115-101.
115-108.2. Pledge of nontax revenues to repayment of loans from State Literary Fund.

Article 12.

Assumption of School District Indebtedness by Counties.

115-109. Method of assumption; validation of proceedings.
115-110. Taxes levied and collected for bonds assumed to be paid into school debt service fund of county; discharge of sinking fund custodian.
115-111. Allocation to district bonds of taxes collected.

Article 13.

Refunding and Funding Bonds of School Districts.

115-112. "School district" defined.
115-113. Continuance of district until bonds are paid.
115-114. Funding and refunding of bonds authorized; issuance and sale or exchange; tax levy for repayment.
115-115. Issuance of bonds by cities and towns; debt statement; tax levy for repayment.

SUBCHAPTER V. SPECIAL LOCAL TAX ELECTIONS FOR SCHOOL PURPOSES.

Article 14.

School Areas Authorized to Vote Local Taxes.

115-116. Purposes for which elections may be called.
115-117. Maximum rate and frequency of elections.
115-118. Who may petition for election.
115-119. Necessary information in petitions.
115-120. Boards of education must consider petitions.
115-121. Action of board of county commissioners or governing body of municipality.
115-122. Rules governing elections.
115-122.1. Effective date; levy of taxes.
115-122.2. Conveyance of school property upon enlargement of city administrative unit.
115-123. Elections in districts created from portions of contiguous counties.
115-124. Levy and collection of taxes.

SUBCHAPTER VI. SCHOOL PROPERTY.

Article 15.

School Sites and Property.

115-125. Acquisition of sites.
115-126. Sale, exchange or lease of school property; easements and rights-of-way.
115-127. Deeds to property.
115-128. Vehicles owned by boards of education exempt from taxation; registration.
115-129. Provisions for school buildings and equipment.
115-130. Erection and repair of schoolhouses.
115-131. Board cannot erect or repair building unless site is owned by board.
115-132. Duty of board to provide equipment for school buildings.
115-133. Duties of boards of education to keep buildings in repair and determine use of school property.
115-133.1. Duties of boards of education and tax-levying authorities to insure public school buildings and equipment.
115-133.2. Power of boards of education to offer rewards for information leading to arrest, etc., of persons damaging school property.

Article 16.

State Insurance of Public School Property.

Sec.

115-134. Authority and rules for organization of system.
115-135. Public School Insurance Fund; decrease of premiums when fund reaches 5% of total insurance in force.
115-136. Insurance of property by school governing boards; notice of election to insure and information to be furnished; outstanding policies.
115-137. Inspections of insured public school properties.
115-138. Information to be furnished prior to insuring in fund; providing for payment of premiums.
115-139. Determination and adjustment of premium rates; certificate as to insurance carried; no lapsation; notice as to premiums required, and payment thereof.
115-140. Adjustment of losses; determination and report of appraisers; payment of amounts to treasurers of local units; disbursement of funds.
115-141. Maintenance of inspection and engineering service; cancellation of insurance.

SUBCHAPTER VII. EMPLOYEES.

Article 17.

Principals' and Teachers' Employment and Contracts.

115-142. System of employment for public school teachers.
115-142.1, 115-142.2. [Repealed.]
115-142.3. Procedure for reducing employment term of any occupational education teacher.
115-143. Health certificate required for teachers and other school personnel.
115-144, 115-145. [Repealed.]
115-146. Duties of teachers generally; principals and teachers may use reasonable force in exercising lawful authority.
115-147. Power to suspend or dismiss pupils.
115-148. Duty to make reports to superintendent; making false reports or records.
115-149. Care of school building.
115-150. Authority and duty of principal generally.
115-150.1. Duty of principal regarding fire hazards.
115-150.2. Inspection of schools for fire hazards; reports; rules and regulations; removal or correction of hazard.
115-150.3. Liability for failure to perform duties imposed by §§ 115-150 to 115-150.2.
115-150.4. Refund of fees upon transfer of pupils.
115-151. Salary increments for experience to teachers, principals and superintendents in armed and auxiliary forces.

Article 17A.

Interstate Agreement on Qualifications of Educational Personnel.

115-151.1. Purpose, findings, and policy.
115-151.2. Definitions.
115-151.3. Interstate educational personnel contracts.
115-151.4. Approved and accepted programs.
115-151.5. Interstate cooperation.
115-151.6. Agreement evaluation.
115-151.7. Other arrangements.
115-151.8. Effect and withdrawal.
115-151.9. Construction and severability.
115-151.10. Designated state official.

Article 18.

Certification and Salaries of Employees; Workmen's Compensation.

115-152. Certificate prerequisite to employment.
115-152.1. Discrimination against blind prohibited in training and hiring of teachers.
115-153. Certifying and regulating the grade and salary of teachers; furnishing to county or city boards available personnel information.
115-153.1. Authority of county and city boards of education to purchase annuity contracts for employees.
115-153.2. Authority for payroll deductions for group insurance and credit union loans.
115-153.3. Additional payroll deductions authorized; written consent to county or city administrative unit.
115-154. Local approval of certificate required.
115-155. Employment of persons without certificate unlawful; salaries not paid.
115-156. Colleges to aid as to certificates.
115-157. Pay of school officials and other employees.
115-157.1. Salaries of teachers and principals in certain State institutions.
115-158. Authority of superintendent to issue salary vouchers.
115-159. Cashing vouchers and payment of sums due on death of school employees.
115-159.1. Salary of teacher injured during episode of violence.

Sec.
115-160. Workmen's Compensation Act applicable to school employees.

Article 18A.

Payroll Savings Plan for Purchase of United States Bonds.

115-160.1. Authority of administrative school unit to establish plan.
115-160.2. Agreement between employee and board of education.
115-160.3. Payroll deductions and investment in United States savings bonds.
115-160.4. Cancellation of agreement; refund to employee.

Article 18B.

Student Teachers.

115-160.5. "Student teacher" and "student teaching" defined.
115-160.6. Legal protection.
115-160.7. Assignment of duties.

SUBCHAPTER VIII. PUPILS.

Article 19.

Census, Admissions and Attendance.

115-161. [Repealed.]
115-162. Age requirement and time of enrollment.
115-163. Pupils residing in school district shall have advantages of public schools.
115-164. Children at orphanages permitted to attend public schools.
115-165. Children not entitled to attend public schools.

Article 20.

General Compulsory Attendance Law.

115-166. Parent or guardian required to keep child in school; exceptions.
115-167. State Board of Education to make rules and regulations; method of enforcement.
115-168. Attendance counselors; reports; prosecutions.
115-169. Violation of law; penalty.
115-170. Investigation and prosecution by attendance counselor.
115-171. Investigation as to indigency of child.
115-172. Deaf children and blind children to attend school; age limits; minimum attendance.
115-173. Parents, etc., failing to enroll deaf child in school guilty of misdemeanor; provisos.
Sec.
115-174. Parents, etc., failing to send blind child to school guilty of misdemeanor; provisos.
115-175. School superintendent to report blind and deaf children.

Article 20A.

Child Health Program.

115-175.1. Expenditures.

Article 21.

Assignment and Enrollment of Pupils.

115-176. Authority to provide for assignment and enrollment of pupils; rules and regulations.
115-176.1. Assignment of pupils based on race, creed, color or national origin prohibited.
115-177. Methods of giving notice in making assignments of pupils.
115-178. Application for reassignment; notice of disapproval; hearing before board.
115-179. Appeal from decision of board.
115-179.1. Exceptional children; special program; dissatisfaction with assignment; right to appeal.

SUBCHAPTER IX. SCHOOL TRANSPORTATION.

Article 22.

School Buses.

115-180. Authority of county and city boards of education.
115-181. Authority and duties of State Board of Education.
115-181.1. [Repealed.]
115-182. Assignment of school buses to schools.
115-183. Use and operation of school buses.
115-184. Assignment of pupils to school buses.
115-185. School bus drivers; monitors.
115-186. School bus routes.
115-187. Inspection of school buses and activity buses; report of defects by drivers; discontinuing use until defects remedied.
115-188. Purchase and maintenance of school buses, materials and supplies.
115-189. Aid in lieu of transportation.
115-190. Contracts for transportation.
115-190.1. Transportation continued for area annexed to municipality or included by consolidation of municipalities.
115-191. Use of school buses by State guard or national guard.

Sec.
115-192. Payment of awards to school bus drivers pursuant to the Workmen's Compensation Act.

Article 23.

Certain injuries to School Children Compensable.

115-193. State Board of Education authorized to pay claims.
115-194. Approval of claims by State Board of Education final.
115-195. Claims paid without regard to negligence of driver; amounts paid out declared lien upon civil recoveries for child.
115-196. Disease and injuries incurred while not riding on bus not compensable.
115-197. Claims must be filed within one year.

SUBCHAPTER X. INSTRUCTION.

Article 24.

Courses of Study.

115-198. Standard course of study for each grade.
115-198.1. [Repealed.]
115-199. Adult education.
115-200. Instruction for handicapped persons.
115-201. Instruction in driver training and safety education.
115-202. Boards of education required to provide courses in operation of motor vehicles.
115-203. Instruction in music education; supervisor and area supervisors.
115-204. Instruction in physical education and health education.
115-205. Observance of special days.
115-205.1 to 115-205.10. [Reserved.]

Article 24A.

Kindergartens.

115-205.11. Establishment and maintenance of kindergartens.
115-205.12. Eligibility.
115-205.13. Kindergartens need not be operated under certain conditions.

Article 25.

Selection and Adoption of Textbooks.

115-206, 115-207 to 115-215. [Repealed.]

Article 25A.

Textbooks and Instructional Material.

115-206.1. Textbook needs are determined by course of study.
115-206.2. State Board of Education to select and adopt textbooks.
115-206.3. Appointment of Textbook Commission.
115-206.4. Commission to evaluate books offered for adoption.
115-206.5. Selection of textbooks by Board.
115-206.6. Adoption of textbooks and contracts with publishers.
115-206.7. Continuance and discontinuance of contracts with publishers.
115-206.8. Procedure for change of textbook.
115-206.9. Advice from and suits by Attorney General.
115-206.10. Publishers to register.
115-206.11. Sale of books at lower price reduces price to State.
115-206.12. Powers and duties of the State Board of Education in regard to textbooks.
115-206.13. State Board of Education authorized to discontinue handling supplementary and library books.
115-206.14. Local boards of education to provide for local operation of the textbook program and the selection and procurement of other instructional materials.
115-206.15. Legal custodians of books furnished by State.
115-206.16. Rental fees for testbooks prohibited; damage fees authorized.
115-206.17. Duties and authority of superintendents of local administrative units.
115-206.18. Right to purchase.

Article 26.

Providing Basal and Supplemental Textbooks and Instructional Materials.

115-216 to 115-228. [Repealed.]

Article 27.

Vocational Education.

115-229. Acceptance of benefits of Federal Vocational Education Act.
115-230. Powers and duties of Board.
115-230.1. Development of Industrial Education Program.
115-231. State Superintendent to enforce Article.
115-232. State appropriation for vocational education.
115-233. State Treasurer authorized to receive and disburse vocational education funds.
115-234. Cooperation of county and city authorities with State Board.
115-235. High schools offering vocational agriculture authorized to acquire lands for forest study.
115-235.1. Development of program in middle and lower grades.

Article 28.

Textile Training School.

Sec.
115-236 to 115-239. [Transferred.]

Article 29.

Vocational Training in Building Trades.

115-240. Use of funds for purchase of building sites, materials, and for acquiring skilled services.
115-241. Sale of buildings constructed by building trades classes; disposition of proceeds.
115-242. Advisory committee on construction of projects.

Article 30.

Vocational Rehabilitation of Persons Disabled in Industry or Otherwise.

115-243. Acceptance of federal aid.
115-244. Authority to cooperate and plan program of rehabilitation.

Article 31.

Private Business, Trade and Correspondence Schools.

115-245. Definitions.
115-246. Exemptions.
115-247. State Board of Education to administer Article; issuance of diplomas by schools; investigation and inspection; regulations and standards.
115-248. License required; application for license; school bulletins; requirements for issuance of license; license restricted to courses indicated; supplementary applications.
115-249. Duration and renewal of licenses; notice of change of ownership, administration, etc.; license not transferable.
115-250. "Commercial Education Fund"; refund of fees.
115-251. Suspension, revocation or refusal of license; notice and hearing; judicial review; grounds.
115-252. Private schools advisory committee; appointment; duties.
115-253. Execution of bond required; filing and recording; actions upon bond.
115-254. Operating school without license or bond made misdemeanor.
115-254.1. Contracts with unlicensed schools and evidences of indebtedness made null and void.

Article 32.

Nonpublic Schools.

115-255. Responsibility of State Board of Education to supervise nonpublic schools; notice of intention to operate new school.

Sec.
115-256. Teachers must have certificates for grades they teach; instruction given must substantially equal that given in public schools.
115-257. Operators must report certain information.

Article 33.

Safety Devices Required.

115-258. Eye protection devices required in certain courses.
115-259. Visitors to wear eye safety devices.
115-260. "Industrial-quality eye protective devices" defined.
115-260.1. "Corrective-protective" devices.

Article 34.

Local Option.

115-261 to 115-273. [Repealed.]

Article 35.

Education Expense Grants.

115-274 to 115-295. [Repealed.]

Article 36.

Training of Mentally Retarded Children.

115-296. State Superintendent of Public Instruction to organize and administer program of training; rules; eligibility for training.
115-297. Local boards may establish programs or centers; joint operation; expenditure of State and local funds; gifts.
115-298. Allocation of sufficient funds to administer program.
115-299. Allocation of state-aid funds to local boards.

Article 37.

Training of Educable Mentally Handicapped Children.

115-300. Organization of program; rules and regulations; eligibility for training; information to local school units.
115-301. Authority of local boards to establish programs; joint operation; duty of local superintendent.
115-302. Expenditure of State and local funds; gifts.
115-303. Requests for teachers and other allotments from State Board; reasons for disapproval of requests to be given; transfer of funds.
115-304. Funds available for program.
115-305. Determination of allotments by State Board; salary schedule for teachers.

Article 38.

Education of Exceptionally Talented Children.

Sec.
115-306. Educational program established.
115-307. Definitions.
115-308. Division for Education of Exceptionally Talented Children created.
115-309. Division administered by Director; appointment and salary of Director; assistance, clerical help and travel allowances.
115-310. Supervisor for testing and pupil classification; appointment and duties; specialists for counseling and identification of students.
115-311. District supervisors; appointment, duties and funds.
115-312. Powers and duties of Director generally.
115-313. Local programs; submission for approval; allotment of funds; teachers; joint programs.
115-314. Programs in pilot centers.
115-315. Programs financed out of local funds not affected.

Article 38A.

Education for Hearing-Impaired Children in the Public Schools.

115-315.1. Purpose of Article.
115-315.2. Definitions.
115-315.3. Organization of program; rules and regulations; eligibility for instructional training; information to local school units.
115-315.4. Authority of local school board to establish programs; joint operations; duty of local superintendent.
115-315.5. Expenditure of State and local funds; gifts.
115-315.6. Request for teachers and other allotments from State Board; disapproval of request; transfer of funds.

Article 38B.

Education Expense Grants for Exceptional Children.

115-315.7. Statement of legislative policy and purposes.
115-315.8. Definitions.
115-315.9. Who may apply for State grants.
115-315.10. Amount of State grants.
115-315.11. Applications to local boards for grants.
115-315.12. Powers of State Board to administer student education expense grants.
115-315.13 to 115-315.15. [Reserved.]

Article 38C.

Section for the Education of Children with Learning Disabilities.

115-315.16. Creation.
115-315.17. Definitions.
115-315.18. Appointment of Section Director.
115-315.19. Appointment of supervisors and specialists.
115-315.20. Programs established; regional consultants.
115-315.21. Powers and duties of Section Director.
115-315.22. Proposals for local programs; approval; funding.

Article 39.

Voluntary Endowment Funds for Public Schools.

115-316. Creation of endowment funds; administration.
115-317. Boards of trustees public corporations; powers and authority generally; investments.
115-318. Expenditure of funds; pledges.
115-319. When only income from fund expended.
115-320. Property and income of board of trustees exempt from State taxation.

SUBCHAPTER XI. SPECIAL EDUCATIONAL INSTITUTIONS.

Article 40.

Governor Morehead School.

115-321. Incorporation, name and management.
115-322 to 115-324. [Repealed.]
115-325. Admission of pupils; how admission obtained.
115-326. Admission of curable blind.
115-327. Admission of pupils from other states.
115-328. Department of Human Resources may confer diplomas.
115-329. [Repealed.]
115-330. State Treasurer is ex officio treasurer of institution.
115-331 to 115-333. [Repealed.]
115-334. When clothing, etc., for pupils paid for by county.
115-335. [Repealed.]

Article 41.

Central North Carolina School for the Deaf.

115-336. Incorporation and location.
115-337 to 115-339. [Repealed.]
115-340. Pupils admitted; education.
115-341. Free textbooks and State purchase and rental system.
115-342. Agreements with local governing authorities.
115-343. [Repealed.]

Article 42.

Central Orphanage of North Carolina.

Sec.
115-344. Creation; powers.
115-345. Directors; selection, self-perpetuation, management of corporation.
115-346. Board of trustees; appropriations; treasurer; board of audit.
115-347. Training of orphans.
115-348. Control over orphans.

SUBCHAPTER XIA. COMPACT.

Article 43.

Interstate Compact for Education.

115-349. Enactment of Compact.
115-350. Establishment of North Carolina Education Council.
115-351. Filing copy of bylaws with Secretary of State.

SUBCHAPTER XII. EXPERIMENTATION AND RESEARCH.

Article 44.

North Carolina Advancement School.

Sec.
115-352. Continuation of North Carolina Advancement School by the State Board of Education.
115-353. Purpose of the North Carolina Advancement School.
115-354. Board of governors.
115-355. Responsibilities of the board of governors.
115-356. State Board of Education to appoint director.
115-357. Responsibilities of the director.

SUBCHAPTER I. GENERAL PROVISIONS.

ARTICLE 1.

State Plan for Public Education.

§ 115-1. General and uniform system of schools. — A general and uniform system of free public schools shall be provided throughout the State, wherein equal opportunities shall be provided for all students, in accordance with the provisions of Article IX of the Constitution of North Carolina. Tuition shall be free of charge to all children of the State, and to every person 18 years of age, or over, who has not completed a standard high school course of study. There shall be operated in every county and city administrative unit a uniform school term of nine months, without the levy of a State ad valorem tax therefor. (1955, c. 1372, art. 1, s. 1; 1963, c. 448, s. 24; 1971, c. 704, s. 1; c. 1231, s. 1.)

Cross Reference. — As to age requirement and time of enrollment, see § 115-162.

State-imposed segregation in the public schools is unconstitutional. Godwin v. Johnston County Bd. of Educ., 301 F. Supp. 1339 (E.D. N.C. 1969).

And State Authorities Have Affirmative Obligation to End It. — State authorities are duty bound to devote every effort toward initiating desegregation and bringing about the elimination of racial discrimination in the public school system. Godwin v. Johnston County Bd. of Educ., 301 F. Supp. 1339 (E.D.N.C. 1969).

The affirmative obligation to seek means of disestablishing state-imposed segregation must be shared by all agencies, or agents of the State. Godwin v. Johnston County Bd. of Educ., 301 F. Supp. 1339 (E.D.N.C. 1969).

School boards operating state-compelled dual systems are clearly charged with the affirmative duty to take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch. Godwin v. Johnston County Bd. of Educ., 301 F. Supp. 1339 (E.D.N.C. 1969).

The State's duty to effect a transition from the dual system of schools formerly imposed by the Constitution and laws of the State of North Carolina to a unitary nonracial school system falls not only upon the local school boards, but also upon the State Board of Education and the State Superintendent of Public Instruction. Godwin v. Johnston County Bd. of Educ., 301 F. Supp. 1339 (E.D.N.C. 1969).

Whether or not the State Board of Education or State Superintendent has actively discriminated against Negroes does not affect their burden to actively seek the desegregation of the public schools in North Carolina. The burden rests upon them, as well as upon the local school board to come forward with a plan that promises realistically to work, and promises realistically to work now. Godwin v. Johnston County Bd. of Educ., 301 F. Supp. 1339 (E.D.N.C. 1969).

Desegregation of Staffs and Faculties. — There is an affirmative duty on the part of a state school board, as well as on the part of other school officials throughout the state, to desegregate staffs and faculties. This is also a constitutional duty apart from any federal regulatory

scheme. Godwin v. Johnston County Bd. of Educ., 301 F. Supp. 1339 (E.D.N.C. 1969).

Quoted in Swann v. Charlotte-Mecklenburg Bd. of Educ., 318 F. Supp. 786 (W.D.N.C. 1970); Webster v. Perry, 367 F. Supp. 666 (M.D.N.C. 1973).

Stated in Givens v. Poe, 346 F. Supp. 202 (W.D.N.C. 1972).

Cited in State ex rel. East Lenoir Sanitary Dist. v. City of Lenoir, 249 N.C. 96, 105 S.E.2d 411 (1958); Fremont City Bd. of Educ. v. Wayne County Bd. of Educ., 259 N.C. 280, 130 S.E.2d 408 (1963).

§ 115-1.1. State policy. — (a) The General Assembly of North Carolina hereby declares that the policy of the State is to ensure every child a fair and full opportunity to reach his full potential and that no child as defined in this section shall be excluded from service or education for any reason whatsoever.

(b) The General Assembly of North Carolina further declares that the public policy of North Carolina is defined in greater detail to carry out the foregoing stated policies as follows:

(1) The State shall provide for a comprehensive early childhood development program by emphasizing preventative and remedial measures designed to provide the services which will enable children to develop to the maximum level their physical, mental, social, and emotional potentials and to strengthen the role of the family as the first and most fundamental influence on child development;

(2) The State shall develop a system of educational opportunities for all children with special needs and require the identification and evaluation of the needs of children and the adequacy of various education programs before placement of children, and shall provide for periodic evaluation of the benefits of programs to the individual child and the nature of the child's needs thereafter;

(3) The State shall prevent denial of equal educational and service opportunity on the basis of national origin, sex, economic status, race, religion, and physical, mental, social or emotional handicap in the provision of services to any child;

(4) It is recognized that children have a variety of characteristics and needs, all of which must be considered if the potential of each child is to be realized; that in order to accomplish this the State must develop a full range of service and education programs, and that a program must actually benefit a child or be designed to benefit a particular child in order to provide such child with appropriate educational and service opportunities.

(c) The General Assembly of North Carolina finds that various studies and various programs have been undertaken and that tremendous public interest exists to seek ways of more effectively rendering a beneficial service to all of our children, and especially with children who have special needs.

In this context the term "child with special needs" means any child who because of temporary or permanent disabilities arising from intellectual, sensory, emotional, physical, environmental factors, or other specific learning disability is inhibited from achieving his full potential; to include, but not limited to, the educable, trainable, profoundly, and functionally retarded, emotionally disturbed, learning disabled, the physically handicapped or other impairments including hospitalized, homebound, or pregnant, the deaf or hearing-impaired, the language or speech-impaired, the blind or visually-impaired, gifted and talented, autistic, dependent, abused, neglected, multiple-impaired, and socially maladjusted. (1973, c. 1293, ss. 2-4.)

§ 115-2. Administration of school system vested in State Board of Education. — The general supervision and administration of the free public school system shall be vested in the State Board of Education, to consist of the Lieutenant Governor, the State Treasurer, and 11 members appointed by the

Governor, subject to confirmation by the General Assembly in joint session. Of the appointive members of the State Board of Education, one shall be appointed from each of the eight educational districts and three shall be appointed as members at large. Appointments shall be for terms of eight years and shall be made in four classes. Appointments to fill vacancies shall be made by the Governor for the unexpired terms and shall not be subject to confirmation.

The Governor shall transmit to the presiding officers of the Senate and the House of Representatives, on or before the sixtieth legislative day of the General Assembly, the names of the persons appointed by him and submitted to the General Assembly for confirmation; thereafter, pursuant to joint resolution, the Senate and the House of Representatives shall meet in joint session for consideration of an action upon such appointments.

The provisions of this section shall not affect the terms of office of the members of the State Board of Education as now constituted. (1955, c. 1372, art. 1, s. 2; 1971, c. 704, s. 2.)

Cited in Jeffers v. Whitley, 165 F. Supp. 951 (M.D.N.C. 1958).

§ 115-3. Educational districts. — The State of North Carolina shall be divided into eight educational districts embracing the counties herein set forth:

First District

Beaufort, Bertie, Camden, Chowan, Currituck, Dare, Gates, Hertford, Hyde, Martin, Pasquotank, Perquimans, Pitt, Tyrrell, Washington.

Second District

Brunswick, Carteret, Craven, Duplin, Greene, Jones, Lenoir, New Hanover, Onslow, Pamlico, Pender, Sampson, Wayne.

Third District

Durham, Edgecombe, Franklin, Granville, Halifax, Johnston, Nash, Northampton, Vance, Wake, Warren, Wilson.

Fourth District

Bladen, Columbus, Cumberland, Harnett, Hoke, Lee, Montgomery, Moore, Richmond, Robeson, Scotland.

Fifth District

Alamance, Caswell, Chatham, Davidson, Forsyth, Guilford, Orange, Person, Randolph, Rockingham, Stokes.

Sixth District

Anson, Cabarrus, Cleveland, Gaston, Lincoln, Mecklenburg, Stanly, Union.

Seventh District

Alexander, Alleghany, Ashe, Avery, Burke, Caldwell, Catawba, Davie, Iredell, Rowan, Surry, Watauga, Wilkes, Yadkin.

Eighth District

Buncombe, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, Macon, Madison, McDowell, Mitchell, Polk, Rutherford, Swain, Transylvania, Yancey. (1955, c. 1372, art. 1, s. 3.)

§ 115-4. Administrative units classified. — Each county of the State shall be classified as a county administrative unit, the schools of which, except in city administrative units, shall be under the general supervision and control of a county board of education with a county superintendent as the administrative officer.

A city administrative unit shall be classified as an area within a county or adjacent parts of two or more contiguous counties which has been or may be approved by the State Board of Education as such a unit for purposes of school administration. The general administration and supervision of a city administrative unit shall be under the control of a board of education with a city superintendent as the administrative officer.

All administrative units, whether city or county, shall be dealt with by the State school authorities in all matters of school administration in the same way. (1955, c. 1372, art. 1, s. 4.)

Cross Reference. — See note to § 115-126.

Suit against Administrative School Unit. — A city administrative school unit may be sued only when and as authorized by statute. Smith v. Hefner, 235 N.C. 1, 68 S.E.2d 783 (1952).

An administrative school unit may not be held liable for torts committed by its trustees or employees. Smith v. Hefner, 235 N.C. 1, 68 S.E.2d 783 (1952).

An "administrative unit" is not a "school district" within the meaning of N.C. Const., Art. II, § 29 (now § 24). Hobbs v. County of Moore, 267 N.C. 665, 149 S.E.2d 1 (1966).

Cited in Fremont City Bd. of Educ. v. Wayne County Bd. of Educ., 259 N.C. 280, 130 S.E.2d 408 (1963).

§ 115-5. School system defined. — The school system of each county and city administrative unit shall consist of 12 years of study or grades, and shall be graded on the basis of a school year of not less than nine months. The system may be organized in one or two ways as follows: The first eight grades shall be styled the elementary school and the remaining four grades, the high school; or if more practicable, a junior high school may be formed by combining the first year of high school with both the seventh and eighth grades or with the eighth grade alone, and a senior high school which shall comprise the last three years of high school work. For purposes of Title V of the National Defense Education Act of 1958 (Public Law 85-864) the term "secondary school" shall be applicable to grades seven through 12. (1955, c. 1372, art. 1, s. 5; 1959, c. 573, s. 1.)

Quoted in Huggins v. Wake County Bd. of Educ., 272 N.C. 33, 157 S.E.2d 703 (1967).

§ 115-6. Schools classified and defined. — The different types of public schools are classified and defined as follows:

(1) An elementary school, that is, a school which embraces a part or all of the eight elementary grades and which may have a kindergarten or other early childhood program.

(2) A high school, that is, a school which embraces a high school department above the elementary grades and which offers at least the minimum high school course of study prescribed by the State Board of Education.

(3) A union school, that is, a school which embraces both elementary and high school grades.

(4) A junior high school, that is, a school which embraces not more than the first year of high school with not more than the upper two elementary grades.

(5) A senior high school, that is, a school which embraces the tenth, eleventh and twelfth grades. (1955, c. 1372, art. 1, s. 6; 1959, c. 915, s. 1; 1963, c. 448, s. 24; 1969, c. 1213, s. 2.)

Quoted in Huggins v. Wake County Bd. of Educ., 272 N.C. 33, 157 S.E.2d 703 (1967).

§ 115-7. Term "district" defined. — The term "district" here used is defined to mean any convenient territorial division or subdivision of a county, created for the purpose of maintaining within its boundaries one or more public schools. It may include one or more incorporated towns or cities, or parts thereof, or one or more townships, or parts thereof, all of which territory is included in a common boundary. There shall be three different kinds of districts:

(1) The nontax district, that is, a territorial division of a county administrative unit under the control of the county board of education, or a city administrative unit under the control of a city board of education, but having no special local tax fund voted by the people for supplementing State and county funds.

(2) The local tax district, that is, a territorial division of a county administrative unit under the control of the county board of education, or a city administrative unit under the control of a city board of education but having in addition to State and county funds, a special local tax fund voted by the people for supplementing State and county funds.

(3) The administrative district, that is, a territorial division of a county administrative unit under the control of a county board of education which is established for administrative purposes and which consists of one or more local tax districts and/or nontax areas or bond districts of the county administrative unit. (1955, c. 1372, art. 1, s. 7; 1965, c. 584, s. 1.)

Equivalent of Township. — See Brown v. Candler, 236 N.C. 576, 73 S.E.2d 550 (1952).

A "school district" is an area within a county in which one or more public schools must be maintained. It is so defined in this section. Hobbs v. County of Moore, 267 N.C. 665, 149 S.E.2d 1 (1966).

§ 115-8. Officials defined. — The governing board of a county administrative unit is "the . . . . . county board of education." The governing board of a city administrative unit is "the . . . . . city board of education." The governing board of the school district is "the . . . . . district committee." The executive officer of either a county or city administrative unit shall be called "superintendent." The executive head of a school shall be called "principal." (1955, c. 1372, art. 1, s. 8; 1965, c. 584, s. 2.)

This section sets up two coordinate classes of local administrative units: (1) county units, and (2) city administrative units. State Highway Comm'n v. Greensboro City Bd. of Educ., 265 N.C. 35, 143 S.E.2d 87 (1965).

Cited in Turner v. Gastonia City Bd. of Educ., 250 N.D. 456, 109 S.E.2d 211 (1959).

§ 115-9. Tax-levying authorities defined. — As used in this Chapter, the term "tax-levying authorities" shall mean the board of county commissioners in all cases except where the boundaries of a city administrative unit shall be coterminous with or situate wholly within the boundaries of an incorporated city or town, in which case the term "tax-levying authorities" shall mean the governing body of such city or town; provided, the municipal governing body may, by appropriate resolution, transfer this authority to the board of county commissioners with the approval of the board of county commissioners. (1955, c. 1372, art. 1, s. 9.)

SUBCHAPTER II. ADMINISTRATIVE ORGANIZATION.

ARTICLE 2.

The State Board of Education.

§ 115-10. Organization of Board. — (a) Presiding Officer. — The State Board of Education shall elect from its membership a chairman and vice-chairman. A majority of the Board shall constitute a quorum for the transaction of business. Per diem and expenses of the appointive members of the Board shall be provided by the General Assembly. The chairman of the Board shall preside at all meetings of the Board. In the absence of the chairman, the vice-chairman shall preside; in the absence of both the chairman and the vice-chairman, the Board shall name one of its own members as chairman pro tempore.

(b) Regular Meetings of Board. — The regular meetings of the Board shall be held each month on a day certain, as determined by the Board. The Board shall determine the hour of the meeting, which may be adjourned from day to day, or to a day certain, until the business before the Board has been completed.

(c) Special Meetings. — Special meetings of the Board may be set at any regular meeting or may be called by the chairman or by the secretary upon the approval of the chairman; provided, a special meeting shall be called by the chairman upon the request of any five members of the Board. In case of regular meetings and special meetings, the secretary shall give notice to each member, in writing, of the time and purpose of the meeting, by letter directed to each member at his home post-office address. Such notice must be deposited in the Raleigh Post Office at least three days prior to the date of meeting.

(d) Voting. — No voting by proxy shall be permitted. Except in voting on textbook adoptions, all voting shall be viva voce unless a record vote or secret ballot is demanded by any member, and a majority of those present and voting shall be necessary to carry a motion.

(e) Voting on Adoption of Textbooks. — A majority vote of the whole membership of the Board shall be required to adopt textbooks, and a roll call vote shall be had on each motion for such adoption or adoptions. A record of all such votes shall be kept in the minute book.

(f) Committees. — The Board may create from its membership such committees as it deems necessary to facilitate its business. The chairman of the Board shall appoint members to the several committees, and the secretary shall be an ex officio member of each committee so created and named.

(g) Record of Proceedings. — All the proceedings of the Board shall be recorded in a well-bound and suitable book, which shall be kept in the office of the Superintendent of Public Instruction, and open to public inspection. (1955, c. 1372, art. 2, s. 1; 1959, c. 573, s. 19; 1971, c. 704, s. 3.)

§ 115-11. Powers and duties generally. — The powers and duties of the State Board of Education are defined as follows:

(1) General Supervision and Administration. — The Board shall have general supervision and administration of the educational funds provided by the State and federal governments, except those mentioned in Sec. 7 of Article IX of the State Constitution, and also excepting such local funds as may be provided by a county, city, or district.

(2) Successors to Powers of President of Literary Fund and to Boards or Commissions. — The Board shall succeed to all the powers and trusts of the president and directors of the Literary Fund of North Carolina; and to all the powers, functions, duties, and property of all abolished commissions and boards including the State School Commission, the State Textbook Commission, the Department of Human Resources, and the State Board of Commercial Education, including the power to take,

hold and convey property, both real and personal, to the same extent that any corporation might take, hold and convey the same under the laws of this State.

(3) Power to Divide the Administrative Units into Districts. — The Board shall have power to create in any county administrative units a convenient number of school districts, upon the recommendation of the county board of education. Such a school district may be entirely in one county or may consist of contiguous parts of two or more counties. The Board may modify the district organization in any administrative unit when it is deemed necessary for the economical and efficient administration and operation of the State school system, when requested to do so by the appropriate county or city board of education.

(4) Divisions of Functions of Board. — The Board shall divide its duties into two separate functions, insofar as may be practicable, as follows:

a. All those matters relating to the supervision and administration of the public school system, except the supervision and management of the fiscal affairs of the Board, shall be under the direction of the State Superintendent in his capacity as the constitutional administrative head of the public school system.

b. All those matters relating to the supervision and administration of the fiscal affairs of the public school fund committed to the administration of the State Board of Education shall be under the supervision and management of the controller.

(5) Appointment of Controller. — The Board shall appoint a controller, subject to the approval of the Governor, who shall serve at the will of the Board and who, under the direction of the Board, shall have supervision and management of the fiscal affairs of the Board. The salary of the controller shall be fixed by the Governor subject to the approval of the Advisory Budget Commission and shall be paid from Board appropriations.

(6) Apportionment of Funds. — The Board shall have authority to apportion and equalize over the State all State school funds and all federal funds granted to the State for assistance to educational programs administered within or sponsored by the public school system of the State.

(7) Investments. — The Board is authorized to direct the State Treasurer to invest in interest-bearing securities any funds which may come into its possession, and which it deems expedient to invest, as other funds of the State are now or may be hereafter invested.

(8) Acceptance of Federal Funds and Aid. — The Board is authorized to accept, receive, use or reallocate to local school units any federal funds, or aids, that may be appropriated now or hereafter by the federal government for the encouragement and improvement of any phase of the free public school program which, in the judgment of the Board, will be beneficial to the operation of the schools. However, the Board is not authorized to accept any such funds upon any condition that the public schools of this State shall be operated contrary to any provisions of the Constitution or statutes of this State.

(9) Power to Purchase at Mortgage Sales; Payment of Drainage Assessments. — The State Board of Education is authorized to purchase at public sale any land or lands upon which it has a mortgage or deed of trust securing the purchase price, or any part thereof, and when any land so sold and purchased by the said Board of Education is a part of a drainage district theretofore constituted, upon which said land assessments have been levied for the maintenance thereof, such

assessments shall be paid by the said State Board of Education, as if said land had been purchased or owned by an individual.

(10) Power to Adjust Debts for Purchase Price of Lands Sold; Sale of Mortgages, etc. — The State Board of Education is hereby authorized and empowered to settle, compromise or otherwise adjust any indebtedness due it upon the purchase price of any land or property sold by it, or to cancel and surrender the notes, mortgages, trust deeds, or other evidence of indebtedness without payment, when, in the discretion of said Board, it appears that it is proper to do so. The Board of Education is further authorized and empowered to sell or otherwise dispose of any such notes, mortgages, trust deeds, or other evidence of indebtedness.

(11) Power to Alter the Boundaries of City School Administrative Units and to Approve Agreements for the Consolidation and Merger of School Administrative Units Located in the Same County. — The Board shall have authority, in its discretion, to alter the boundaries of city school administrative units and to approve agreements submitted by county and city boards of education requesting the merger of two or more contiguous city school administrative units and the merger of city school administrative units with county school administrative units and the consolidation of all the public schools in the respective units under the administration of one board of education: Provided, that such merger of units and reorganization of school units shall not have the effect of abolishing any special taxes that may have been voted in any such units.

(12) Power to Allot Special Teaching Personnel and Funds for Clerical Assistants to Principals. — The Board shall have power to provide for the enrichment and strengthening of educational opportunities for the children of the State, and when sufficient State funds are available to provide first for the allotment of such a number of teachers as to prevent the teacher load from being too great in any school, the Board is authorized, in its discretion, to make an additional allotment of teaching personnel to county and city administrative units of the State to be used either jointly or separately, as the Board may prescribe. Such additional teaching personnel may be used in the administrative units as librarians, special teachers, or supervisors of instruction and for other special instructional services such as art, music, physical education, adult education, special education, or industrial arts as may be authorized and approved by the Board. The salary of all such personnel shall be determined in accordance with the State salary schedule adopted by the Board.

In addition, the Board is authorized and empowered in its discretion, to make allotments of funds for clerical assistants for classified principals and for attendance counselors.

The Board is further authorized, in its discretion, to allot teaching personnel to county and city administrative units for experimental programs and purposes.

(13) Power to Make Provisions for Sick Leave. — The Board shall provide for a minimum of five days per school term of sick leave with pay for all public school employees and shall promulgate rules and regulations providing for necessary substitutes on account of said sick leave. The pay for a substitute shall be fixed by the Board. The Board may provide to each administrative unit not exceeding one percent (1%) of the cost of instructional services for the purpose of providing substitute teachers for those on sick leave as authorized by law or by regulations

of the Board, but not exceeding the provisions made for other State employees.

(14) Miscellaneous Powers and Duties. — All the powers and duties exercised by the State Board of Education shall be in conformity with the Constitution and subject to such laws as may be enacted from time to time by the General Assembly. Among such duties are:

a. To certify and regulate the grade and salary of teachers and other school employees.
b. To adopt and supply textbooks.
c. To adopt a standard course of study upon recommendation of the State Superintendent of Public Instruction.
d. To formulate rules and regulations for the enforcement of the compulsory attendance law.
e. Repealed by Session Laws 1963, c. 448, s. 27.
f. To report to the General Assembly on the operation of the State Literary Fund.
g. To manage and operate a system of insurance for public school property.

(15) Acceptance of Gifts and Grants. — The Board is authorized to accept, receive, use, or reallocate to local school units any gifts, donations, grants, bequests, or other forms of voluntary contributions.

(16) Power to Provide for Programs or Projects in the Cultural and Fine Arts Areas. — The Board is authorized and empowered, in its discretion, to make provisions for special programs or projects of a cultural and fine arts nature for the enrichment and strengthening of educational opportunities for the children of the State.

For this purpose, the Board may use funds received from gifts or grants and, with the approval of the Director of the Budget, may use State funds which the Board may find available in any budget administered by the Board.

(17) Power to Provide Library Resources, Textbooks and Other Instructional Materials to Private Schools. — The State Board of Education or any other State agency designated by the Governor shall have the power and authority to provide library resources, textbooks, and other instructional materials purchased from federal funds appropriated for the funding of the Elementary and Secondary Education Act of 1965 (Public Law 89-10, 89th Congress, HR 2362, effective April 11, 1965) or other acts of Congress for the use of children and teachers in private elementary and secondary schools in the State as required by acts of Congress and rules and regulations promulgated thereunder.

(18) Education Research. — The Board is authorized to sponsor or conduct educational research and special school projects considered important by the Board for improving the public schools of the State. Such research or projects may be conducted during the summer months and involve one or more local school units as the Board may determine. The Board may use any available funds for such purposes. (1955, c. 1372, art. 2, s. 2; 1957, c. 541, s. 11; 1961, c. 969; 1963, c. 448, ss. 24, 27; c. 688, ss. 1, 2; c. 1223, s. 1; 1965, c. 1185, s. 2; 1967, c. 643, s. 1; 1969, c. 517, s. 1; 1971, c. 704, s. 4; c. 745; 1973, c. 476, s. 138; c. 675.)

Editor's Note. — The first 1973 amendment substituted "Department of Human Resources" for "State Board for Vocational Education" in subdivision (2).

The second 1973 amendment rewrote the first sentence of subdivision (13).

Constitutionality. — No question arises under the Constitution of the United States with reference to the validity of delegation of authority to the State Board of Education. Guthrie v. Taylor, 279 N.C. 703, 185 S.E.2d 193 (1971), cert.

denied, 406 U.S. 920, 92 S. Ct. 1774, 32 L. Ed. 2d 119 (1972).

Rule-Making Authority Is Not Unconstitutional Delegation of Power. — Subdivision (14)a of this section and § 115-153 neither enlarge nor restrict the authority to make rules and regulations concerning the certification of teachers conferred by the Constitution upon the State Board of Education. Thus, they are not delegations of power to the State Board of Education by the General Assembly. Guthrie v. Taylor, 279 N.C. 703, 185 S.E.2d 193 (1971), cert. denied, 406 U.S. 920, 92 S. Ct. 1774, 32 L. Ed. 2d 119 (1972).

The principle forbidding delegation of legislative powers without the establishment of appropriate standards applies to the powers conferred upon the Board by statute; it does not apply to the powers conferred upon the Board by the Constitution. Guthrie v. Taylor, 279 N.C. 703, 185 S.E.2d 193 (1971), cert. denied, 406 U.S. 920, 92 S. Ct. 1774, 32 L. Ed. 2d 119 (1972).

Derivation of Board Powers. — The State Board of Education derives powers both from the Constitution and from acts of the General Assembly contained in this Chapter. Guthrie v. Taylor, 279 N.C. 703, 185 S.E.2d 193 (1971), cert. denied, 406 U.S. 920, 92 S. Ct. 1774, 32 L. Ed. 2d 119 (1972).

Quoted in State v. Brooks, 279 N.C. 45, 181 S.E.2d 553 (1971).

Stated in North Carolina Teachers Ass'n v. Asheboro City Bd. of Educ., 393 F.2d 736 (4th Cir. 1968).

Cited in Jeffers v. Whitley, 165 F. Supp. 951 (M.D.N.C. 1958).

§ 115-11.1. Authority to expend funds for transportation of certain children. — The State Board of Education is authorized to expend public funds to defray the reasonable cost of motor vehicle transportation for autistic and communications-handicapped children and deaf and blind children to the nearest proper public educational institution located within the State. (1973, c. 1351, s. 1.)

§§ 115-11.2 to 115-11.5: Reserved for future codification purposes.

ARTICLE 2A.

The Council on Educational Services for Exceptional Children.

§ 115-11.6. Council established. — There is hereby established an Advisory Council to the State Board of Education to be called the Council on Educational Services for Exceptional Children. (1973, c. 1079, s. 1.)

§ 115-11.7. Appointment and terms of members; travel allowances and per diem. — The Council shall consist of 17 members to be appointed as follows: two members appointed by the Governor; two members of the Senate appointed by the Lieutenant Governor; two members of the House of Representatives appointed by the Speaker of the House; and 11 members appointed by the State Board of Education. Of those members of the Council appointed by the State Board, one member shall be selected from each congressional district within the State and each member so selected shall be a parent of a school-age child. The State Board shall designate as chairman of the Council one of those individuals appointed by either the Governor, the Lieutenant Governor, or the Speaker of the House.

The appointments to the Council shall be made within 90 days after the ratification of this act. On the first Monday after 90 days after the ratification of this act has elapsed, the Council shall hold its first meeting. The term of appointment shall be for two years. Those initially appointed to the Council by the Governor, Lieutenant Governor, and Speaker of the House shall hold office until July 1, 1976, or until their successors are appointed and qualified. The term for members appointed by the State Board of Education shall be as follows:

(1) The members representing odd-numbered congressional districts (1, 3, 5, 7, 9 and 11) shall be appointed for a term of four years beginning July 1, 1974 and ending June 30, 1978.

(2) The members representing even-numbered congressional districts (2, 4, 6, 8 and 10) shall be appointed for a term of two years beginning July 1, 1974 and ending June 30, 1976.

(3) The full term for appointments subsequent to the initial appointments shall be for a term of four years.

Each Council member shall serve without pay, but shall receive travel allowances and per diem in the same amount provided for members of the North Carolina General Assembly. (1973, c. 1079, s. 2.)

Editor's Note. — The act from which this Article was codified was ratified April 1, 1974.

§ 115-11.8. Duties. — The duties of the Council shall be to carry out periodic review of the exceptional child programs in the public schools and to receive complaints from citizens concerning all aspects of the operation of the public schools dealing with the exceptional child; to review these complaints; and to make recommendations, by majority vote, to the State Board of Education on corrective actions and programming. (1973, c. 1079, s. 3.)

§ 115-11.9. Meetings; secretarial and clerical staff; supplies. — The Council shall meet in offices provided by the State Department of Public Instruction on a date to be agreed upon by the members of the Council from meeting to meeting; provided, however, that the Council shall meet no less than once every three months. The Department of Public Instruction shall provide the necessary secretarial and clerical staff and supplies to accomplish the objectives of the Council. (1973, c. 1079, s. 4.)

ARTICLE 3.

State Superintendent of Public Instruction.

§ 115-12. Chief administrative officer of the State Board of Education. — As provided in Article IX, Sec. 4(2) of the North Carolina Constitution, the Superintendent of Public Instruction shall be the secretary and chief administrative officer of the State Board of Education. (1955, c. 1372, art. 3, s. 1; 1971, c. 704, s. 5.)

Cited in Jeffers v. Whitley, 165 F. Supp. 951 (M.D.N.C. 1958).

§ 115-13. Office and salary. — The Superintendent shall keep his office in the Education Building in Raleigh, and his salary shall be ten thousand dollars ($10,000) a year, payable monthly.

From and after the time the State Superintendent of Public Instruction shall take the oath of office and begin serving the term for which he is to be elected in 1956, he shall receive an annual salary of thirty-three thousand five hundred dollars ($33,500): Provided, that said salary shall be paid out of the Contingency and Emergency Fund if funds for same are not available in the general fund for the biennium ending June 30, 1957. (1955, c. 1372, art. 3, s. 2; c. 1374; 1963, c. 1178, s. 2; 1967, c. 1130; c. 1237, s. 2; 1969, c. 1214, s. 2; 1971, c. 912, s. 2; 1973, c. 778, s. 2.)

Editor's Note. — Session Laws 1973, c. 778, provides, in s. 2: "Chapter 115 of the General Statutes as it appears in the 1971 Cumulative Supplement is amended by deleting the words and figures 'thirty-one thousand dollars ($31,000)' from lines 3 and 4 of the second paragraph of G.S. 115-13 and inserting in lieu thereof the words and figures 'thirty-three thousand five hundred dollars ($33,500).' "

This section as it appeared in the 1971 Supplement did not contain the words and figures "thirty-one thousand dollars ($31,000)"; the salary of the Superintendent of Public Instruction under the section as amended by Session Laws 1971, c. 912, s. 2, was $28,500. However, Session Laws 1973, c. 778, s. 7, provides: "It is the purpose of this act to fix the salary of the Attorney General at thirty-five thousand dollars ($35,000) per annum, the salary of the Superintendent of Public Instruction at thirty-three thousand five hundred dollars ($33,500) per annum, the salary of the Commissioner of Agriculture at thirty-one thousand dollars ($31,000) per annum, and the salaries of the other members of the Council of State at thirty-one thousand dollars ($31,000) per annum."

In the section as set out above, the 1973 amendatory act has been given effect according to the intent expressed in the above-quoted s. 7.

§ 115-14. Administrative duties. — It shall be the duty of the State Superintendent of Public Instruction:

(1) To organize and establish a Department of Public Instruction which shall include such divisions and departments as are necessary for supervision and administration of the public school system.

(2) To keep the public informed as to the problems and needs of the public schools by constant contact with all school administrators and teachers, by his personal appearance at public gatherings, and by information furnished to the press of the State.

(3) To report biennially to the Governor 30 days prior to each regular session of the General Assembly, such report to include information and statistics of the public schools, with recommendations for their improvement and for such changes in the school law as shall occur to him.

(4) To have printed and distributed such educational bulletins as he shall deem necessary for the professional improvement of teachers and for the cultivation of public sentiment for public education, and to have printed all forms necessary and proper for the administration of the Department of Public Instruction. (1955, c. 1372, art. 3, s. 3.)

§ 115-15. Duties as secretary to State Board of Education. — As secretary, under the direction of the Board, it shall be the duty of the State Superintendent of Public Instruction:

(1) To administer through the Department of Public Instruction the instructional policies established by the Board.

(2) To keep the Board informed regarding developments in the field of public education.

(3) To make recommendations to the Board with regard to the problems and needs of education in North Carolina.

(4) To make available to the public schools a continuous program of comprehensive supervisory services.

(5) To collect and organize information regarding the public schools, on the basis of which he shall furnish the Board such tabulations and reports as may be required by the Board.

(6) To communicate to the public school administrators all information and instructions regarding instructional policies and procedures adopted by the Board.

(7) To have custody of the official seal of the Board and to attest all deeds, leases, or written contracts executed in the name of the Board. All deeds of conveyance, leases, and contracts affecting real estate, title to which is held by the Board, and all contracts of the Board required to be in writing and under seal, shall be executed in the name of the Board by the chairman and attested by the secretary; and proof of the execution, if required or desired, may be had as provided by law for the proof of corporate instruments.

(8) To attend all meetings of the Board and to keep the minutes of the proceedings of the Board in a well-bound and suitable book, which minutes shall be approved by the Board prior to its adjournment; and, as soon thereafter as possible, to furnish to each member of the Board and the controller a copy of said minutes.

(9) To perform such other duties as the Board may assign to him from time to time. (1955, c. 1372, art. 3, s. 4.)

ARTICLE 4.

Powers and Duties of Controller.

§ 115-16. Controller to be administrator of fiscal affairs. — (a) Executive Administrator. — The controller is constituted the executive administrator of the Board in the supervision and management of the fiscal affairs of the Board. In this capacity it shall be his duty, under the direction of the Board, to administer the funds provided for the operation of the schools of the State for 180 days on such standards as may be determined by the Board and always within the total funds appropriated therefor.

(b) Fiscal Affairs of Board Defined. — All matters pertaining to the budgeting, allocation, accounting, auditing, certification, and disbursing of public school funds, now or hereafter committed to the administration of the State Board of Education, are included within the meaning of the term "fiscal affairs of the Board" and, under the direction of the Board, shall be supervised and managed by the controller. The fiscal affairs of the Board shall also include:

(1) The preparation and administration of the State school budget, including all funds appropriated for the maintenance of the nine months' public school term.

(2) The allotment of teachers.

(3) The protection of State funds by appropriate bonds.

(4) Workmen's compensation as applicable to school employees.

(5) Sick leave.

(6) And all fiscal matters embraced in the objects of expenditure referred to in section IX, "Public Schools," in the act entitled "An Act to Make Appropriations for the Maintenance of the State's Departments, Bureaus, Institutions, and Agencies, and for Other Purposes," including therein:

a. Support of nine months' term.

b. State Board of Education.

c. Vocational education.

d. Purchase of free textbooks.

e. Vocational textile training school.

f. Administration of the State School Plant Construction Improvement and Repair Fund.

(7) The administration of such federal funds as may be made available by acts of Congress for the use of public schools.

(8) Administration of all State funds derived from the sale and rental of textbooks in the public schools.

(9) The operation of plant, and other auxiliary agencies under the administration of the Board.

(10) Administration of the Public School Insurance Fund. (1955, c. 1372, art. 4, s. 1.)

§ 115-17. Duties of controller defined. — The controller, under the direction of the Board, shall perform the following duties:

(1) He shall maintain a record or system of bookkeeping which shall reflect at all times the status of all educational funds committed to the administration of the Board and particularly the following:

a. State appropriation for maintenance of the nine months' public school term, which shall include all the objects of expenditure enumerated in G.S. 115-79.
b. State appropriation and any other funds provided for the purchase and rental of public school textbooks.
c. State literary and building funds and such other building funds as may be hereafter provided by the General Assembly for loans, or grants, to county boards of education for school building purposes.
d. State and federal funds for vocational education and other funds as may be provided by act of Congress for assistance to the educational program.
e. Vocational rehabilitation funds.
f. State appropriation for the maintenance of the Board and its office personnel and including all employees serving under the Board.
g. Any miscellaneous funds within the jurisdiction of the Board not included in the above.

(2) He shall prepare all forms and questionnaires necessary to furnish information and data for the consideration of the Board in preparing the State budget estimates required to be determined by the Board as to each administrative unit.

(3) He shall certify to each administrative unit the teacher allotment as determined by the Board under G.S. 115-59. The superintendents of the administrative units shall then certify to the State Superintendent the names of the persons employed as teachers and principals by districts. The State Superintendent shall then determine the certificate ratings of the teachers and principles, shall certify such ratings to the controller, who shall then determine in accordance with the State standard salary schedule for teachers and principals, the salary rating of each person so certified. The controller shall then determine, in accordance with the schedule of salaries established, the total cost of salaries in each county and city administrative unit for teachers and principals to be included in the State budget for the current fiscal year.

(4) He shall satisfy himself before issuing any requisition upon the Budget Bureau for payment out of the State treasury of any funds placed to the credit of any administrative unit, under the provisions of G.S. 115-84:
a. That funds are lawfully available for the payment of such requisition; and
b. Where the order covers salary payment to any employee or employees, that the amount thereof is within the salary schedule or salary rating of the particular employee.

(5) He shall procure, through the Division of Purchase and Contract, a contract or contracts for the purchase of the estimated needs and requirements of the several administrative units, covering the items of janitor's supplies. instructional supplies, supplies used by the State Board of Education, and all other supplies, the payment for which is made from funds committed to the administration of the Board.

(6) He shall purchase from the various publishers the testbooks needed and required in the public schools in accordance with contracts made by the State Board of Education.

(7) He shall, in cooperation with the State Auditor, have jurisdiction in the auditing of all school funds, under the provisions of G.S. 115-97, and also in the auditing of all other funds which by law are committed to the administration of the Board.

(8) He shall attend all meetings of the Board and shall furnish all such information and data concerning the fiscal affairs of the Board as the Board may require.
(9) He shall employ all necessary employees who work under his direction in the administration of the fiscal affairs of the Board.
(10) He shall report directly to the Board upon all matters coming within his supervision and management.
(11) He shall furnish to the State Superintendent such information relating to fiscal affairs as may be necessary in the administration of his official duties.
(12) He shall perform such other duties as may be assigned to him by the Board from time to time. (1955, c. 1372, art. 4, s. 2.)

Editor's Note. — All of the functions, property, records, etc., of the Budget Bureau have been transferred by § 143-344 to the Department of Administration.

ARTICLE 5.

County and City Boards of Education.

§ 115-18. How constituted. — The county board of education in each county shall consist of five members elected by the voters of the county at large for terms of four years. (1955, c. 1372, art. 5, s. 1; 1967, c. 972, s. 1; 1969, c. 1301, s. 2.)

Local Modification. — Bladen: 1967, c. 258; Burke: 1963, c. 1138; Caldwell: 1967, c. 787; Camden: 1965, c. 594, s. 3; Halifax: 1971, c. 530; Hyde: 1973, c. 1166; Lincoln: 1969, c. 637; McDowell: 1957, c. 144; Onslow: 1967, c. 630; 1969, c. 2; Orange: 1959, c. 176; Randolph: 1967, c. 739.

Opinions of Attorney General. — Mr. William L. Hill, II, Attorney, New Hanover County Board of Education, 40 N.C.A.G. 230 (1969).

A member of the county board of education holds a public office under the State and was thus subject to the prohibition against double office holding contained in former N.C. Const., Art. XIV, § 7 (see now N.C. Const., Art. VI, § 9). Edwards v. Yancey County Bd. of Educ., 235 N.C. 345, 70 S.E.2d 170 (1952).

Under former Art. XIV, § 7, of the Constitution (see now N.C. Const., Art. VI, § 9) one person could not hold the office of county commissioner and also be a member of the county board of education. State ex rel. Barnhill v. Thompson, 122 N.C. 493, 29 S.E. 720 (1898).

Provisions as to Election of Board Members Superseded by Merger Agreement. — See opinion of Attorney General to Mr. E.P. Dameron, Attorney for the McDowell County Board of Education, 40 N.C.A.G. 225 (1970).

Cited in Walker v. Moss, 246 N.C. 196, 97 S.E.2d 836 (1957); Jeffers v. Whitley, 165 F. Supp. 951 (M.D.N.C. 1958); State Highway Comm'n v. Greensboro City Bd. of Educ., 265 N.C. 35, 143 S.E.2d 87 (1965).

§ 115-19. How elected. — The county boards of education shall be elected on a nonpartisan basis at the time of the primary election in 1970 and biennially thereafter. The names of the candidates shall be printed on the ballots without reference to any party affiliation and any qualified voter residing in the county shall be entitled to vote such ballots. Except as otherwise provided herein, the election shall be conducted according to the provisions of Chapter 163 of the General Statutes then governing primary elections, and any local acts amendatory thereto.

The terms of office of the members shall be staggered so as nearly equal to one half as possible shall expire every two years. If the appointments heretofore made by the General Assembly are for terms of office which comply with the preceding sentence, elections shall be held in 1970, 1972, and biennially thereafter to fill vacancies as they occur for terms of four years. If the appointments heretofore made by the General Assembly are for terms which all expire in the same year, at the first election held hereunder the three members receiving the highest number of votes shall be elected for terms of four years and the two members elected with the next highest number of votes

shall be elected for terms of two years. Thereafter, all candidates shall be elected for terms of four years. If the appointments heretofore made by the General Assembly are for terms of office which do not comply with the first sentence of this paragraph but do not all expire in the same year, and/or if the board consists of any number of members other than five, the board shall, on or before the fourteenth day before the deadline for filing notice of candidacy for county offices in 1970, adopt a resolution designating the term of office to be served by members elected to fill vacancies occurring in 1970 and 1972, which terms shall be either two years or four years, in order that the board shall consist of five members with as nearly equal to one half as possible of the terms of office expiring every two years thereafter. Any such resolution shall be filed with the county board of elections, the State Board of Elections, and the State Board of Education. (1955, c. 1372, art. 5, s. 2; 1967, c. 972, s. 2; 1969, c. 1301, s. 2.)

Local Modification. — Buncombe: 1953, c. 632; Burke: 1963, c. 1138; Caldwell: 1967, c. 787; Camden: 1965, c. 594, s. 3; Durham: 1957, c. 429; Graham: 1961, c. 475, and 1965, c. 404, repealing 1959, c. 85; Haywood: 1953, c. 1259; Henderson: 1961, c. 142; Iredell: 1957, c. 951; Jackson: 1959, c. 78; Johnston: 1969, c. 261; Jones: 1973, c. 349; Lee: 1953, c. 705; Lincoln: 1969, c. 637; Macon: 1965, c. 601; Montgomery: 1973, c. 61; Onslow: 1967, c. 630; 1969, c. 2; Pitt: 1965, cc. 89, 656; Polk: 1973, c. 845; Randolph: 1967, c. 739; Robeson: 1963, c. 240; Stokes: 1965, c. 967; Surry: 1953, c. 780, s. 4.

Editor's Note. — Session Laws 1959, c. 436, provides that notwithstanding any public-local or local act to the contrary, the members of the board of education of Polk County shall be nominated and elected as prescribed by this section.

Section 4 of c. 89, Session Laws 1965, provides that art. 5, c. 115, of the General Statutes "shall be applicable to Pitt County except as modified, or when in conflict with the provisions of this act."

Opinions of Attorney General. — Mr. William L. Hill, II, Attorney, New Hanover County Board of Education, 40 N.C.A.G. 230 (1969).

Superseded by Special Act for Designated Boards of Education. — See opinion of Attorney General to Mr. John G. Mills, Jr., Attorney for Wake County Board of Education, 40 N.C.A.G. 226 (1970).

Nonpartisan Election Requires Plurality of Votes Only. — See opinion of Attorney General to Mr. R.V. Biberstein, Jr., Pender County Board of Education Attorney, 40 N.C.A.G. 238 (1970).

Elections, "Single-Shot" Voting Regulations Not Applicable to County Boards of Education. — See opinion of Attorney General to Mr. Thomas H. Morris, Chairman, Lenior County Board of Elections, 40 N.C.A.G. 293 (1970).

As to former statute, see State ex rel. Atkins v. Fortner, 236 N.C. 264, 72 S.E.2d 594 (1952).

Cited in Walker v. Moss, 246 N.C. 196, 97 S.E.2d 836 (1957).

§ 115-20. County board of elections to provide for elections. — The county board of elections under the direction of the State Board of Elections, shall make all necessary provisions for elections of county boards of education as are herein provided for. The county board of elections of each county shall file with the State Board of Elections a statement specifying the size and method of election of members of its county board of education. (1955, c. 1372, art. 5, s. 3; 1967, c. 972, s. 3.)

Local Modification. — Burke: 1963, c. 1138; Caldwell: 1967, c. 787; Lincoln: 1969, c. 637; Onslow: 1967, c. 630; 1969, c. 2; Randolph: 1967, c. 739.

§ 115-21. City board of education, how constituted; how to employ principals, teachers, janitors and maids. — The board of education for any city administrative unit shall be appointed or elected as now provided by law. If no provision is now made by the law for the filling of vacancies in the membership of any city board of education, such vacancy may be filled by the governing body of the city or town embraced by said administrative unit. In the event that any such vacancy is not filled in this manner within 30 days, the State Board of Education may fill such vacancy or vacancies.

In the city administrative units, principals and teachers shall be elected and janitors and maids appointed by the board of education of such administrative unit upon the recommendation of the superintendent of city schools. (1955, c. 1372, art. 5, s. 4.)

Local Modification. — Town of Scotland Neck: 1969, c. 31; town of Warrenton: 1969, c. 578; Littleton-Lake Gaston School District: 1969, c. 628.

Final Authority for Election of Teachers Vested in Board. — The superintendent makes recommendations, but the final authority for the election of teachers is vested in the school board. Johnson v. Gray, 263 N.C. 507, 139 S.E.2d 551 (1965).

§ 115-22. Members to qualify. — Those persons who shall be elected members of the county boards of education must qualify by taking the oath of office on or before the first Monday in December next succeeding their election. A failure to qualify within that time shall constitute a vacancy which shall be filled as set out in G.S. 115-24. Those persons appointed to fill a vacancy must qualify within 30 days after notification. A failure to qualify within that time shall constitute a vacancy.

This section shall not have the effect of repealing any local or special acts relating to boards of education of any particular counties whose membership to said boards is chosen by a vote of the people. (1955, c. 1372, art. 5, s. 5; 1967, c. 972, s. 4.)

Local Modification. — Lincoln: 1969, c. 637.

Effect of Failure to Qualify on Day Prescribed. — A county board of education is a body politic and corporate, and is authorized to prosecute and defend suits in its own name, and to discharge certain duties imposed by statute, and where the members of the board appointed by the General Assembly failed to take the oath of office on the date prescribed by statute, but took oath on the next succeeding day, their failure to qualify on the day prescribed did not impair the existence of the corporate body, and where they had discharged the statutory duties imposed upon them, and no vacancy had been declared by the State Board of Education, and no proceedings in the nature of quo warranto had been instituted to determine their right to office, the acts of the appointees as members of the board could not be annulled by a proceeding to restrain the board from purchasing a school site in discharge of its statutory duties. Crabtree v. Board of Educ., 199 N.C. 645, 155 S.E. 550 (1930).

§ 115-23. Vacancies in nominations for membership on county boards. — If any candidate nominated on a partisan basis shall die, resign, or for any reason become ineligible or disqualified between the date of his nomination and the time for the election, such vacancy caused thereby may be filled by the actions of the county executive committee of the political party of such candidate. (1955, c. 1372, art. 5, s. 6; 1967, c. 972, s. 5.)

Local Modification. — Lincoln: 1969, c. 637.

§ 115-24. Vacancies in office. — All vacancies in the membership of the boards of education whose members are elected pursuant to the provisions of G.S. 115-19 by death, resignation, or other causes shall be filled by appointment by the remaining members of the board, of a person to serve until the next election of members of such board, at which time the remaining unexpired term of the office in which the vacancy occurs shall be filled by election. (1955, c. 1372, art. 5, s. 7; 1967, c. 972, s. 6.)

Local Modification. — Caldwell: 1967, c. 787; Lincoln: 1969, c. 637; Onslow: 1967, c. 630; 1969, c. 2; Randolph: 1967, c. 739; Stokes: 1965, c. 967.

Purpose of Section. — See Edwards v. Yancey County Bd. of Educ., 235 N.C. 345, 70 S.E.2d 170 (1952).

Unexpired Term Divided into Two Parts. — See State ex rel. Atkins v. Fortner, 236 N.C. 264, 72 S.E.2d 594 (1952).

Filling Vacancies on Board Whose Members Elected on Nonpartisan Basis. — See opinion of Attorney General to Mr. Jesse C. Carson, Jr., Superintendent, County Schools, 40 N.C.A.G. 235 (1970).

§ 115-25. Eligibility for board membership; holding other offices. — No one shall be eligible to serve as a member of a county or city board of education who is not known to be a person of intelligence, good moral character, good business qualifications, and known to be in favor of public education. No person while actually engaged in teaching in the public schools, or serving as an employee of the schools, or engaged in teaching in or conducting a private school in connection with which private school there is in any manner conducted a public school, and no member of a district committee, shall be eligible as a member of a county or city board of education.

Membership on a board of education is hereby declared to be an office that, with the exceptions provided above, may be held concurrently with any appointive office, pursuant to Article VI, Sec. 9 of the Constitution, but any person holding an elective office shall not be eligible to serve as a member of a county or city board of education. (1955, c. 1372, art. 5, s. 8; 1971, c. 704, s. 6; 1973, c. 1446, s. 1.)

Local Modification. — Cumberland: 1963, c. 311; Guilford: 1971, c. 136; Robeson: 1963, c. 311.

Editor's Note. — The 1973 amendment substituted "Membership on a board of education is hereby declared to be an office" for "A member of a board of education is hereby declared to be an officer" at the beginning of the second paragraph.

Applicable to Technical Institute Personnel. — See opinion of Attorney General to Mr. Holland McSwain, President, Tri-County Technical Institute, 40 N.C.A.G. 279 (1970).

§ 115-26. Organization of board. — At the first meeting of the new county board in April, the members of all such boards as shall have been appointed by the retiring General Assembly shall organize by electing one of their members as chairman for a period of one year, or until his successor is elected and qualified. The chairman of the county board of education shall preside at the meetings of the board, and in the event of his absence or sickness, the board may appoint one of their members temporary chairman. The superintendent of schools, whether a county or city superintendent, shall be ex officio secretary to his respective board. He shall keep the minutes of the meetings of the board but shall have no vote: Provided, that in the event of a vacancy in the superintendency, the board may elect one of its members to serve temporarily as secretary to the board. (1955, c. 1372, art. 5, s. 9.)

Local Modification. — Moore: 1959, c. 977, s. 1.

§ 115-27. Board a body corporate. — The board of education of each county in the State shall be a body corporate by the name and style of "The . . . . . County Board of Education," and the board of education of each city administrative school unit in the State shall be a body corporate by the name and style of "The . . . . . City Board of Education." The several boards of education, both county and city, shall hold all school property and be capable of purchasing and holding real and personal property, of building and repairing schoolhouses, of selling and transferring the same for school purposes, and of prosecuting and defending suits for or against the corporation.

Where there is public school property now in the possession of school committees who were bodies corporate prior to January 1, 1900, or who became

bodies corporate by special act of the General Assembly but who have since ceased to be bodies corporate; and where land or lands were conveyed by deed bearing date prior to January 1, 1900, to local trustees for school purposes, and such deed makes no provision for successor trustees to those named in said deed, and all of such deed makes no provision for successor trustees to those named in said deed, and all of such trustees are dead; and where such land or lands are not now being used for educational purposes either by the county board of education or the city board of education of a city administrative unit wherein same are located, the clerk of the superior court of the county wherein such property or such land or lands are located shall convey said property or land or lands to the board of education of the administrative unit in which the land or lands are located.

County and city boards of education, subject to any paramount powers vested by law in the State Board of Education or any other authorized agency shall have general control and supervision of all matters pertaining to the public schools in their respective administrative units; they shall execute the school laws in their units; and shall have authority to make agreements with other boards of education to transfer pupils from one administrative unit to another unit when the administration of the schools can be thereby more efficiently and more economically accomplished. (1955, c. 1372, art. 5, s. 10.)

Board Has Legal Existence Apart from Members. — Since the county board of education is a corporate body, it necessarily has a legal existence separate and apart from its members. Edwards v. Yancey County Bd. of Educ., 235 N.C. 345, 70 S.E.2d 170 (1952); McLaughlin v. Beasley, 250 N.C. 221, 108 S.E.2d 226 (1959).

Committees are not given final authority. Their acts are under, subordinate to, and controlled by, the county or city boards. Revels v. Oxendine, 263 N.C. 510, 139 S.E.2d 737 (1965).

Actions against Board. — A county school board under the provisions of this section is a body corporate, and while it may sue and be sued in its corporate name, this fact, standing alone, is not determinative as to what actions may be maintained against it. Eller v. Board of Educ., 242 N.C. 584, 89 S.E.2d 144 (1955).

A county school board of education has immunity from liability for torts of its members or agents except such liability as may be established under the Tort Claims Act, § 143-291 et seq. Eller v. Board of Educ., 242 N.C. 584, 89 S.E.2d 144 (1955); Fields v. Durham City Bd. of Educ., 251 N.C. 699, 111 S.E.2d 910 (1960).

The Tort Claims Act, applicable to the State Board of Education and to the State departments and agencies, except as amended by § 143-300.1, does not include local units such as county and city boards of education. Turner v. Gastonia City Bd. of Educ., 250 N.C. 456, 109 S.E.2d 211 (1959).

Tort action against city school board based on negligence of employee not allowed on grounds of governmental immunity. See Turner v. Gastonia City Bd. of Educ., 250 N.C. 456, 109 S.E.2d 211 (1959).

An adjoining property owner was entitled to maintain an action against county school board for recovery of compensation for an alleged taking of plaintiff's land arising out of the construction and operation of a sewage disposal device by the school board which allegedly rendered plaintiff's spring unfit for use and his dwelling unfit for habitation, since complaint did not allege or attempt to allege a cause of action in tort. Eller v. Board of Educ., 242 N.C. 584, 89 S.E.2d 144 (1955).

An action may be maintained against a county board of education on a teacher's contract. Kirby v. Stokes County Bd. of Educ., 230 N.C. 619, 55 S.E.2d 322 (1949).

Applied in Taylor v. Crisp, 21 N.C. App. 359, 205 S.E.2d 102 (1974).

Stated in State Highway Comm'n v. Greensboro City Bd. of Educ., 265 N.C. 35, 143 S.E.2d 87 (1965).

Cited in Morrow v. Mecklenburg County Bd. of Educ., 195 F. Supp. 109 (W.D.N.C. 1961).

§ 115-28. Meetings of the board. — All county and city boards of education shall meet on the first Monday in January, April, July, and October of each year, or as soon thereafter as practicable. A board may elect to hold regular monthly meetings, and to meet in special session upon the call of the chairman or of the secretary as often as the school business of the administrative unit may require. (1955, c. 1372, art. 5, s. 11.)

A county board of education has no authority to transact business except at a regular or special meeting, and statements or promises made by the individual members thereof have no binding effect on the board unless it expressly authorized them. Kistler v. Randolph County Bd. of Educ., 233 N.C. 400, 64 S.E.2d 403 (1951).

Attended by a Quorum. — A county board of education can exercise its power only in a regular or special meeting attended by at least a quorum of its members. It cannot perform its functions through its members acting individually, informally, and separately. Iredell County Bd. of Educ. v. Dickson, 235 N.C. 359, 70 S.E.2d 14 (1952).

The statute creating the county board of education does not specify in terms the number of members competent to transact its corporate business in the absence of other members. As a consequence, the common-law rule that a majority of the whole membership is necessary to constitute a quorum applies. Edwards v. Yancey County Bd. of Educ., 235 N.C. 345, 70 S.E.2d 170 (1952).

That action by a board of education was taken at a special meeting rather than a regular meeting has no bearing on the question of the bad faith or abuse of discretion in taking such action, since special meetings are permitted by this section. Kistler v. Randolph County Bd. of Educ., 233 N.C. 400, 64 S.E.2d 403 (1951).

§ 115-29. Compensation of board members. — County and city boards of education may fix the compensation for each member not to exceed five dollars ($5.00) per diem and seven cents (7¢) per mile to and from the places of meeting and no member of the board of education shall receive any compensation for any services rendered except the per diem provided herein for attending meetings of the board or such other traveling expenses as may be incurred while performing duties imposed upon any member by authority of the board.

The State Nine Months School Fund shall provide one hundred dollars ($100.00) of the cost of the per diem and mileage of each county board of education. Funds for the per diem and a mileage for all meetings of city boards of education and for the per diem and expenses of any meetings of the county board of education in excess of the one hundred dollars ($100.00) provided by the State, shall be provided from the current expense fund budget of such city or county.

This section shall not have the effect of repealing any local or special act relating to the compensation or expenses of members of any county or city boards of education. (1955, c. 1372, art. 5, s. 12.)

Local Modification. — Alexander: 1973, c. 285; Ashe: 1957, c. 1125; Bertie: 1973, c. 930; Catawba: 1955, c. 69; Clay: 1957, c. 924, s. 5; Craven: 1957, c. 97; Davie: 1973, c. 217; Franklin: 1957, c. 289; Gaston: 1973, c. 1168; Harnett: 1957, c. 339; 1973, c. 864; Hoke: 1973, c. 1165; Hyde: 1953, c. 606, s. 2; Jackson: 1957, c. 68; Johnston: 1969, c. 919; Orange: 1953, c. 281, s. 1; 1963, c. 516; 1971, c. 347; Polk: 1953, c. 1175; 1957, c. 210; 1967, c. 403; Richmond: 1957, c. 451; Robeson: 1973, c. 1165; Rockingham: 1957, c. 655; Scotland: 1973, c. 1165: Surry: 1959, c. 914; Transylvania: 1953, c. 1320; 1957, c. 174, s. 6; Vance: 1967, c. 262; 1973, c. 1174; Warren: 1967, c. 507; city of Lexington: 1973, c. 162; city of New Bern: 1973, c. 1170.

§ 115-30. Removal of member of county or city board. — In case the State Superintendent of Public Instruction shall have sufficient evidence that any member of a county or city board of education is not capable of discharging, or is not discharging, the duties of his office as required by law, or is guilty of immoral or disreputable conduct, he shall notify the chairman of such board of education, unless such chairman is the offending member, in which case all other members of such board shall be notified. Upon receipt of such notice there shall be a meeting of said board of education for the purpose of investigating the charges, and if the charges are found to be true, such board shall declare the office vacant: Provided, that the offending member shall be given proper notice of the hearing and that record of the findings of the other members shall be recorded in the minutes of such board of education. (1955, c. 1372, art. 5, s. 13.)

§ 115-31. Suits and actions. — (a) A county or city board of education shall institute all actions, suits, or proceedings against officers, persons, or corporations, or their sureties, for the recovery, preservation, and application of all money or property which may be due to or should be applied to the support and maintenance of the schools, except in case of a breach of his bond by the treasurer of the county school fund, in which case action shall be brought by the board of county commissioners.

(b) In all actions brought in any court against a county or city board of education, the order or action of the board shall be presumed to be correct and the burden of proof shall be on the complaining party to show the contrary. (1955, c. 1372, art. 5, s. 14.)

The right to sue for the protection or recovery of the school funds of a particular school administrative unit belongs by necessary implication to the governing board of that unit. Indeed, this section confers upon the county board of education in explicit terms the power to sue for the preservation and recovery of the money or property of the county administrative unit. Branch v. Robeson County Bd. of Educ., 233 N.C. 623, 65 S.E.2d 124 (1951).

Presumptions and Burden of Proof. — The provisions of this section clearly provide for a presumption of correctness as to any order or action of the board in all actions brought in any court against a county or city board of education. This section further places the burden of proof on the complaining party to show otherwise. Eggiman v. Wake County Bd. of Educ., 22 N.C. App. 459, 206 S.E.2d 754 (1974).

Cited in Turner v. Gastonia City Bd. of Educ., 250 N.C. 456, 109 S.E.2d 211 (1959).

§ 115-32. Power to subpoena and to punish for contempt. — County and city boards of education shall have power to issue subpoenas for the attendance of witnesses. Subpoenas may be issued in any and all matters which may lawfully come within the powers of a board and which, in the discretion of the board, requires investigation; and it shall be the duty of the sheriff or any process serving officer to serve such subpoenas upon payment of their lawful fees.

County and city boards of education shall have power to punish for contempt for any disorderly conduct or disturbance tending to disrupt them in the transaction of official business. (1955, c. 1372, art. 5, s. 15.)

Quoted in Johnson v. Branch, 242 F. Supp. 721 (E.D.N.C. 1965).

§ 115-33. Witness failing to appear; misdemeanor. — Any witness who shall willfully and without legal excuse fail to appear before a county or city board of education to testify in any matter under investigation by the board shall be guilty of a misdemeanor, and shall be fined not more than fifty dollars ($50.00) or imprisoned not more than 30 days. (1955, c. 1372, art. 5, s. 16.)

§ 115-34. Appeals to board of education and to superior court. — An appeal shall lie from the decision of all school personnel to the appropriate county or city board of education. In all such appeals it shall be the duty of the board of education to see that a proper notice is given to all parties concerned and that a record of the hearing is properly entered in the records of the board conducting the hearing.

The board of education may designate hearing panels composed of not less than two members of the board to hear and act upon such appeals in the name and on behalf of the board of education.

An appeal shall lie from the decision of a county or city board of education to the superior court of the State in any action of a county or city board of

education affecting one's character or right to teach. (1955, c. 1372, art. 5, s. 17; 1971, c. 647.)

Appeal from School Personnel Decisions. — The first part of this section which provides for an appeal from decisions of school personnel to the county or city board of education has no application where the decision complained of is the decision of a county board of education. Still v. Lance, 279 N.C. 254, 182 S.E.2d 403 (1971).

Termination of Employment Does Not Affect Character. — This section provides for an appeal from a decision of a county or city board of education to the superior court when the action of the board of education is one "affecting one's character or right to teach." The decision of a board to terminate the employment of a teacher at the end of the school year does not affect her character, nor does it deprive her of the right to teach elsewhere. Still v. Lance, 279 N.C. 254, 182 S.E.2d 403 (1971).

Where the county board of education ordered the removal of school committeemen, and the committeemen appealed to the superior court, the judgment of the superior court judge holding the act of the board of education in removing the committeemen invalid and dismissing the appeal for want of jurisdiction was inconsistent and erroneous. Board of Educ. v. Anderson, 200 N.C. 57, 156 S.E. 153 (1930).

Quoted in Johnson v. Branch, 242 F. Supp. 721 (E.D.N.C. 1965).

§ 115-35. Powers and duties of county and city boards generally. — (a) To Provide an Adequate School System. — It shall be the duty of county and city boards of education to provide an adequate school system within their respective administrative units, as directed by law.

(b) General Powers and General Control. — All powers and duties conferred and imposed by law respecting public schools, which are not expressly conferred and imposed upon some other official, are conferred and imposed upon county and city boards of education. Said boards of education shall have general control and supervision of all matters pertaining to the public schools in their respective administrative units and they shall enforce the school law in their respective units.

(c) Power to Divide Administrative Units into Attendance Areas. — County boards of education shall have authority to divide their various units into attendance areas without regard to district lines, and city boards of education shall have authority to divide their various units into attendance areas.

(d) Power to Regulate Extracurricular Activities. — County and city boards of education shall make all rules and regulations necessary for the conducting of extracurricular activities in the schools under their supervision, including a program of athletics, where desired, without assuming liability therefor; provided, that all interscholastic athletic activities shall be conducted in accordance with rules and regulations prescribed by the State Board of Education.

(e) Fixing Time of Opening and Closing Schools. — The time of opening and closing the public schools shall be fixed and determined by county and city boards of education in their respective administrative units. Different opening and closing dates may be fixed for schools in the same administrative unit but all schools using the same buses for transportation of pupils must open and close at the same time.

(f) Power to Regulate Fees, Charges and Solicitations. — County and city boards of education shall adopt rules and regulations governing solicitations of, sales to, and fund-raising activities conducted by, the students and faculty members in schools under their jurisdiction, and no fees, charges, or costs shall be collected from students and school personnel without approval of the board of education as recorded in the minutes of said board; provided, this section shall not apply to such textbook fees as are determined and established by the State Board of Education. All schedules of fees, charges and solicitations approved by county and city boards of education shall be reported to the State Superintendent of Public Instruction.

(g) Acceptance and Administration of Federal or Private Funds. — County and city boards of education shall have power and authority to accept, receive and administer any funds or financial assistance given, granted or provided under the provisions of the Elementary and Secondary Education Act of 1965 (Public Law 89-10, 89th Congress, HR 2362) and under the provisions of the Economic Opportunity Act of 1964 (Public Law 88-452, 88th Congress, S. 2642), or other federal acts or funds from foundations or private sources, and to comply with all conditions and requirements necessary for the receipt, acceptance and use of said funds. In the administration of such funds, county and city boards of education shall have authority to enter into contracts with and to cooperate with and to carry out projects with nonpublic elementary and secondary schools, community groups and nonprofit corporations, and to enter into joint agreements for these purposes with other county and city boards of education. County and city boards of education shall furnish such information as shall be requested by the State Board of Education, from time to time, relating to any programs related or conducted pursuant to this section.

(h) Educational Research. — County and city boards of education are authorized to sponsor or conduct educational research and special projects approved by the State Department of Public Instruction and the State Board of Education that may improve the school system under its jurisdiction. Such research or projects may be conducted during the summer months and the board may use any available funds for such purposes. (1955, c. 1372, art. 5, s. 18; 1957, c. 262; 1963, c. 425; 1965, c. 1185, s. 1; 1969, c. 517, s. 2.)

Local Modification. — Person, as to subsection (d): 1957, c. 183.

Cross Reference. — As to duty of board of education to provide school buildings and equipment, see § 115-129 and note thereto.

Selection of School Sites. — The county board of education is given discretionary powers to direct and supervise the county school system for the benefit of all the children therein, including the duty, among others, of selecting a school site, with which the courts will not interfere in the absence of its abuse. McInnish v. Board of Educ., 187 N.C. 494, 122 S.E. 182 (1924).

Location, Transfer, etc., of Schools. — In the absence of statutory limitations upon the power to perform this duty, discretion is vested in said boards to locate, discontinue, transfer and establish high schools in the districts of their several counties. In the absence of abuse, this discretion cannot be set aside or controlled by the courts. The principle stated and applied in deciding the question presented by the appeal in Newton v. School Comm., 158 N.C. 186, 73 S.E. 886 (1923), is well settled. Clark v. McQueen, 195 N.C. 714, 143 S.E. 528 (1928).

The statutes vest in the sound discretion of the board of education of a county the right to transfer an existing school in one district to an adjoining district for the advantage of the residents of the county, and with the fair exercise of this discretion, or in the absence of manifest abuse, the courts will not interfere, or give injunctive relief. Clark v. McQueen, 195 N.C. 714, 143 S.E. 528 (1928). But see § 115-76.

Sale of Newspapers. — A solicitation or commercial activity, such as the sale of newspapers, is within the power of the school board to regulate. Cloak v. Cody, 326 F. Supp. 391 (M.D.N.C. 1971).

There is no merit to a plaintiff's argument that because the distribution of a newspaper is constitutionally protected he should be allowed to sell. Cloak v. Cody, 326 F. Supp. 391 (M.D.N.C. 1971).

The courts may compel a county board of education to act upon discretionary powers conferred on them by the legislature, but cannot tell them how they must act. Key v. Board of Educ., 170 N.C. 123, 86 S.E. 1002 (1915).

The phrase "without assuming liability therefor" in subsection (d) of this section was inserted for the purpose of making it clear that governing authorities were not waiving governmental immunity from torts, and does not restrict the power of such boards to contract for transportation or other required items necessary in connection with duly approved interscholastic activities. State ex rel. North Carolina Util. Comm'n v. McKinnon, 254 N.C. 1, 118 S.E.2d 134 (1961).

Where the county purchasing agent purchases equipment for a school and gives a note for the same signed by him in the name of the school, the county is not liable on the note, the purchasing agent having no connection with the county board of education. Keith v. Henderson County, 204 N.C. 21, 167 S.E. 481 (1933).

Applied in Dilday v. Beaufort County Bd. of Educ., 267 N.C. 438, 148 S.E.2d 513, 149 S.E.2d 345 (1966).

Quoted in Turner v. Gastonia City Bd. of Educ., 250 N.C. 456, 109 S.E.2d 211 (1959).

Stated in Givens v. Poe, 346 F. Supp. 202 (W.D.N.C. 1972).

§ 115-36. Length of school day, school month, and school term. — (a) School Day. — The length of the school day shall be determined by the several county and city boards of education for all public schools in their respective administrative units, and the minimum time for which teachers shall be employed in the schoolroom or on the grounds supervising the activities of children shall not be less than six hours: Provided, the several county and city boards of education may adopt rules and regulations allowing handicapped pupils, kindergarten pupils, and pupils attending the first, second, and third grades to attend school for a period less than six hours. The superintendent of the several county and city boards of education, in the event of an emergency, act of God, or any other conditions requiring the termination of classes before six hours have elapsed, may suspend the operation of any school for that particular day without loss of credit to the pupil or loss of pay to the teacher.

(b) School Month. — A school month shall consist of 20 teaching days. Schools shall not be taught on Saturdays unless the needs of agriculture, or other conditions in the unit or district make it desirable that school be taught on such days. Whenever it is desirable to complete the school term of 180 days in a shorter term than nine calendar months, the board of education of any administrative unit may, in its discretion, require that school shall be taught on legal holidays, except Sundays, and in accordance with the custom and practice of such community.

(c) School Term. — There shall be operated in every school in the State a uniform school term for instructing pupils of 180 days: Provided, that the State Board of Education, or the board of education of any administrative unit with the approval of the State Board of Education, may suspend the operation of any school or schools in such units, not to exceed a period of 60 days of said term of 180 days, when in the sound judgment of the State Board of Education, or the board of education of any administrative unit with the approval of the State Board of Education, conditions justify such suspension. Provided, further, that when the operation of any school is suspended the period of suspension shall be deducted from the total of 180 days included for each school year operation, all teachers shall be entitled to normal pay for the days of school of the suspended term, not to exceed a period of 15 school days during the school term.

Full authority is hereby given to the State Board of Education during any period of emergency to order general, and if necessary, extended recesses or adjournment of the public schools in any section of the State where the planting or harvesting of crops or any emergency conditions make such action necessary. (1955, c. 1372, art. 5, s. 19; 1963, c. 1223, s. 2; 1969, c. 678; 1971, c. 85; c. 90, s. 1; 1973, c. 1137.)

Editor's Note. — The 1973 amendment made the proviso to the first sentence of subsection (a) applicable to kindergarten pupils and to pupils attending the third, as well as the first and second, grade.

§ 115-37. Subjects taught in public schools. — County and city boards of education shall provide for the efficient teaching in each grade of all subjects included in the outline course of study prepared by the State Superintendent of Public Instruction, which course of study shall include instruction in Americanism, government of the State of North Carolina, government of the United States, fire prevention, harmful or illegal drugs including alcohol at the appropriate grade levels. Nothing in this Chapter shall prohibit city or county boards of education from operating a nongraded system in which pupils are

taught at their individual learning levels. (1955, c. 1372, art. 5, s. 20; 1957, cc. 845, 1101; 1969, c. 487, s. 2; 1971, c. 356.)

Cross References. — As to further provisions for teaching of "fire prevention" in the colleges and schools of the State, see § 69-7. As to instruction in the prevention of forest fires, see § 113-60.

§ 115-38: Repealed by Session Laws 1973, c. 603, s. 3.

Cross Reference. — For present provisions as to kindergartens, see §§ 115-205.11 through 115-205.13.

§ 115-39. Requirements and limitations of board in selecting superintendent and his term of office. — At a meeting to be held on the first Monday in April, 1957, or as soon thereafter as practicable, and biennially or quadrennially thereafter during the month of April, the various county boards of education named by the General Assembly which convened in February of such year or elected by the people at the preceding general election, as the case may be, shall meet and elect a county superintendent of schools, subject to the approval of the State Superintendent of Public Instruction and the State Board of Education. Such superintendent shall take office on the following July 1 and shall serve for a term of two or four years, or until his successor is elected and qualified. The superintendent shall be elected for a term of either two or four years, which term shall be in the discretion of the county board of education. The term and conditions of employment shall be stated in a written contract which shall be entered into between the board of education and the superintendent. A copy of the contract shall be filed with the State Superintendent of Public Instruction before any person is eligible for this office. A certification to the county board of education by the State Superintendent of Public Instruction showing that the person proposed for the office of county superintendent of schools holds a superintendent's certificate and has had three years' experience in school work in the past 10 years, together with a doctor's certificate showing the person to be free from any contagious or communicable disease, shall make any person eligible for this office: Provided, the requirement of a superintendent's certificate shall not be applicable to persons now serving as superintendents. Immediately after the election, the chairman of the county board of education shall report the name and address of the person elected to the State Superintendent of Public Instruction.

If any board of education shall elect a person to serve as superintendent of schools in any administrative unit who is not qualified, or cannot qualify, according to this section, such election is null and void and it shall be the duty of such board of education to elect a person who can qualify.

In all city administrative units, the superintendent of schools shall be elected by the city board of education of such unit, to serve for a period of either two or four years, which term of office shall be within the discretion of the board; and the qualifications, provisions and approval shall be the same as for county superintendents. The election shall be held biennially or quadrennially, as the case may be, during the month of April. (1955, c. 1372, art. 5, s. 22; 1957, c. 686, s. 1; 1967, c. 697; 1973, c. 446.)

Local Modification. — Clay (as to term of office of county superintendent): 1953, c. 706; Davidson: 1965, c. 271; Lee (as to term of office of county superintendent): 1963, c. 481.

Editor's Note. — The 1973 amendment added the fourth and fifth sentences of the first paragraph.

§ 115-40. Office, equipment, and clerical assistants for superintendent. — It shall be the duty of the various boards of education to provide the superintendent of schools with an appropriate office. Likewise, it shall be the duty of the various boards of education to furnish adequately the superintendent's office and provide all necessary office supplies. Authority is hereby given to boards of education to employ sufficient clerical assistants and purchase sufficient office machines and equipment to the end that the business of the superintendent of schools shall always be conducted in a prompt and efficient manner. (1955, c. 1372, art. 5, s. 23.)

§ 115-41. Prescribing duties of superintendent not in conflict with law. — All acts of county and city boards of education, not in conflict with State law, shall be binding on the superintendent, and it shall be his duty to carry out all rules and regulations of the board. (1955, c. 1372, art. 5, s. 24.)

§ 115-42. Removal of county or city superintendent. — County or city boards of education are authorized to remove a superintendent who is guilty of immoral or disreputable conduct or who shall fail or refuse to perform the duties required of him by law. In case the State Superintendent of Public Instruction shall have sufficient evidence at any time that any superintendent of schools is not capable of discharging, or is not discharging, the duties of his office as required by law or is guilty of immoral or disreputable conduct, he shall report this matter to the board of education employing said superintendent of schools. It shall then be the duty of said board of education to hear the evidence in such case and, if after careful investigation it shall find the charges true, it shall declare the office vacant at once and proceed to elect a successor; provided, that such superintendent shall have the right to try his title to office in the courts of the State. (1955, c. 1372, art. 5, s. 25.)

Termination Is Subject to Review. — The decision of a county board of education terminating the employment of the superintendent of schools and declaring the office vacant was subject to review under former Article 33 of Chapter 143 (now Chapter 150A). James v. Wayne County Bd. of Educ., 15 N.C. App. 531, 190 S.E.2d 224 (1972).

Procedure and Scope of Review. — Although this section, which provides for the removal of school superintendents, contains a proviso that such superintendent shall have the right to try his title to office in the courts of the State, it is silent as to the procedure and the scope of review contemplated. The procedure and scope of review shall be as provided by former Chapter 143, Article 33 (now Chapter 150A.) James v. Wayne County Bd. of Educ., 15 N.C. App. 531, 190 S.E.2d 224 (1972).

§ 115-43. Removal of committeemen for cause. — In case the county superintendent or any member of the county board of education shall have sufficient evidence at any time that any member of any school committee is not capable of discharging, or is not discharging, the duties of his office, or is guilty of immoral or disreputable conduct, he shall bring the matter to the attention of the county board of education, which shall thoroughly investigate the charges. If the board of education finds that the evidence supports the charges made to such an extent that the actions and conduct of said committeeman are not for the best interests of the schools, then the board shall proceed to remove such committeeman and appoint his successor: Provided, that such committeeman shall be given proper notice of the hearing and that a record of the findings of the board shall be recorded in the minutes of the meeting. (1955, c. 1372, art. 5, s. 26.)

Committeeman May Be Removed Only for Cause. — A school committeeman for a district, although appointed by the county board of education, holds for a definite term, and is not removable at the will or caprice of the county board of education, but may be removed only for

cause. Russ v. Board of Educ., 232 N.C. 128, 59 S.E.2d 589 (1950).

After Notice and Fair Hearing. — Any school committeeman against whom the statutory proceeding for removal is brought must be given notice of the proceeding, and of the charges against him, and afforded an opportunity to be heard and to produce testimony in his defense, and the county board of education shall not remove him from his office unless it determines, after a full and fair hearing on the merits, that one or more of the specified causes for removal has been established by the evidence. Russ v. Board of Educ., 232 N.C. 128, 59 S.E.2d 589 (1950).

Review of Board's Proceedings. — A proceeding for the removal of a school district committeeman is judicial or quasi-judicial in character, and, there being no statutory provision for appeal, the procedure to obtain a review of the board's proceedings is by certiorari. Russ v. Board of Educ., 232 N.C. 128, 59 S.E.2d 589 (1950).

Inconsistent Judgment. — Where a county board of education orders the removal of school committeemen, judgment of the superior court holding the act of the board invalid and also dismissing the appeal for want of jurisdiction is inconsistent and erroneous. Board of Educ. v. Anderson, 200 N.C. 57, 156 S.E. 153 (1930).

§ 115-44. Assistant superintendent and supervisors. — County and city boards of education shall have authority to employ an assistant superintendent, and supervisors in addition to those that may be furnished by the State when, in the discretion of the board of education, the schools of the administrative unit can thereby be more efficiently and more economically operated and when funds for the same are provided in the current expense fund budget. The duties of such assistant superintendent and supervisors shall be assigned by the superintendent with the approval of the board of education.

County and city boards of education may, upon the recommendation of the superintendent, elect assistant or associate superintendents for a term of from one to four years. The term may not, however, exceed the expiration date of the superintendent's contract, unless the remaining time of the superintendent's contract is less than one year. If there is less than one year remaining on the superintendent's contract, the assistant or associate superintendent shall be given a contract through the next school year.

The term of employment shall be stated in a written contract which shall be entered into between the board of education and the assistant or associate superintendent, a copy of which shall be filed with the State Superintendent of Public Instruction as a matter of information. The assistant or associate superintendent may not be dismissed during the term to which he is elected except for misconduct of such a nature as to indicate he is unfit to continue in his position incompetence, neglect of duty, or failure or refusal to carry out validly assigned duties. All dismissals during the contract period shall follow the procedure set out for the dismissal of principals and teachers in G.S. 115-145 [G.S. 115-142]. (1955, c. 1372, art. 5, s. 27; 1971, c. 1188, s. 1; 1973, c. 733.)

Editor's Note. — The 1973 amendment added to the first sentence of the third paragraph "a copy of which shall be filed with the State Superintendent of Public Instruction as a matter of information."

§ 115-45. Authority of board over teachers, supervisors and principals. — County and city boards of education, upon the recommendation of the superintendent, shall have full power to make all just and needful rules and regulations governing the conduct of teachers, principals, and supervisors; the kind of reports they shall make, and their duties in the care of school property. (1955, c. 1372, art. 5, s. 28; 1973, c. 782, s. 31.)

Editor's Note. — The 1973 amendment deleted the former second paragraph, authorizing boards of education to investigate and pass upon the character of teachers and school officials and to dismiss them for immoral or disreputable conduct and to investigate and pass

upon the fitness of applicants for employment, and the former third paragraph, authorizing boards to investigate and act upon charges made by superintendents against teachers, principals or supervisors.

Stated in Givens v. Poe, 346 F. Supp. 202 (W.D.N.C. 1972).

§ 115-46. Providing for training of teachers. — County and city boards of education are authorized to provide for the professional growth of teachers while in service and to pass rules and regulations requiring teachers to cooperate with their superintendent for the improvement of instruction in the classroom and for promoting community improvement. (1955, c. 1372, art. 5, s. 29.)

§ 115-47. Pay of teachers and other school employees. — It shall be the duty of every county and city board of education to provide for the prompt monthly payment of all salaries due teachers, other school officials and employees, all current bills and other necessary operating expenses. All salaries and bills shall be paid as provided by law for disbursing State and local funds. (1955, c. 1372, art. 5, s. 30.)

Quoted in Turner v. Gastonia City Bd. of Educ., 250 N.C. 456, 109 S.E.2d 211 (1959).

§ 115-48. Tax-levying authorities authorized to borrow and boards of education limited in expenditures. — If the taxes for the current year are not collected when the salaries and other necessary operating expenses come due, and the money is not available for meeting such expenses, it shall be the duty of the tax-levying authorities to borrow against the amount approved in the budget and to issue short term notes for the amounts so borrowed in accordance with the provisions of the County Finance Act and the Local Government Act. The interest on all such notes shall be provided by the tax-levying authorities in addition to the amount approved in the budget, unless this item is specifically included in the budget. However, if a county or city board of education shall willfully create a debt or shall in any other way cause the expenses for the year to exceed the amount authorized in the budget, without the approval of the tax-levying authorities, the indebtedness shall not be a valid obligation of the county or city, as the case may be, and the members of the board responsible for making the debt may be held liable for the same. (1955, c. 1372, art. 5, s. 31.)

Local Modification. — Mecklenburg and city of Charlotte: 1959, c. 448.

Liability of County Commissioners for Debt Created by County Board of Education. — See Hampton v. Board of Educ., 195 N.C. 213, 141 S.E. 744 (1928).

§ 115-49. Salary schedule for teachers. — Every county and city board of education may adopt, as to teachers and school officials not paid out of State funds, a salary schedule similar to the State salary schedule, but it likewise shall recognize a difference in salaries based on different duties, training, experience, professional fitness, and continued service in the same school system; but if any county or city board of education shall fail to adopt such a schedule, the State salary schedule shall be in force. No teacher shall receive a salary higher than that provided in the salary schedule, unless by action of the board of education a higher salary is allowed for special fitness, special duties, or under extraordinary circumstances.

Whenever a higher salary is allowed, the minutes of the board shall show what salary is allowed and the reason for the same: Provided, that a county board of education, upon the recommendation of the committee of a district, may authorize the committee and the superintendent to supplement the salaries of

all teachers of the district from funds derived from taxes within such district, and the minutes of the board shall show what increase is allowed each teacher in each such district. Provided, further, that when one or more local tax districts have been combined to create an administrative district, the county board of education may supplement the salaries of all teachers of each local tax district from funds derived from taxes collected within such local tax district, and the minutes of the board shall show what increase is allowed each teacher in each such district. (1955, c. 1372, art. 5, s. 32; 1965, c. 584, s. 3.)

§ 115-50. Authority for salary vouchers. — The authority for boards of education to issue salary vouchers to all school employees, whether paid from State or local funds, shall be a monthly payroll prepared on forms furnished by the State Board of Education and containing all information required by the controller of the State Board of Education. This monthly payroll shall be signed by the principal of each school. (1955, c. 1372, art. 5, s. 33; 1965, c. 584, s. 4.)

Local Modification. — Mecklenburg: 1959, c. 378, s. 11.

§ 115-51. School food services provided by county and city boards of education. — As a part of the function of the public school system, county and city boards of education may, in their discretion, provide school food services in the schools under their jurisdiction. All school food services made available under this authority shall be provided in accordance with standards and regulations recommended by the State Superintendent of Public Instruction and approved by the State Board of Education.

All school food services shall be operated on a nonprofit basis, and any earnings therefrom over and above the cost of operation as defined herein shall be used to reduce the cost of food, to serve better food, or to provide free or reduced price lunches to indigent children and for no other purpose. The term, "cost of operation," shall be defined as actual cost incurred in the purchase and preparation of food, the salaries of all personnel directly engaged in providing food services, and the cost of nonfood supplies as outlined under standards adopted by the State Board of Education. Personnel shall be defined as food service supervisors or directors, bookkeepers directly engaged in food service record keeping and those persons directly involved in preparing and serving food. Provided that food service personnel shall be paid from the funds of food services only for services rendered in behalf of lunchroom services. Any cost incurred in the provisions and maintenance of school food services over and beyond the "cost of operation" as defined in this section shall be included in the budget request filed annually by county and city boards of education with boards of county commissioners. It shall not be mandatory that the provisions of G.S. 115-52 and 143-129 be complied with in the purchase of supplies and food for such school food services. (1955, c. 1372, art. 5, s. 34; 1965, c. 912; 1967, c. 990.)

§ 115-52. Purchase of equipment and supplies. — It shall be the duty of county and city boards of education to purchase or exchange all supplies, equipment and materials in accordance with contracts made by or with the approval of the Department of Administration. Title to instructional supplies, office supplies, fuel and janitorial supplies, enumerated in the current expense fund budget and purchased out of State funds, shall be taken in the name of the county or city board of education which shall be responsible for the custody and replacement: Provided, that no contracts shall be made by any county or city administrative unit for purchases unless provision has been made in the budget of such unit to provide payment therefor, or unless surplus funds are on hand to pay for same, and in order to protect the State purchase contracts, it is hereby made the mandatory duty upon the part of the governing authorities

of such local units to pay for such purchases promptly in accordance with the terms of the contract of purchase. (1955, c. 1372, art. 5, s. 35; 1965, c. 840.)

Local Modification. — Mecklenburg and city of Charlotte: 1959, c. 448.

§ 115-53. Liability insurance and waiver of immunity as to torts of agents, etc. — Any county or city board of education, by securing liability insurance as hereinafter provided, is hereby authorized and empowered to waive its governmental immunity from liability for damage by reason of death or injury to person or property caused by the negligence or tort of any agent or employee of such board of education when acting within the scope of his authority or within the course of his employment. Such immunity shall be deemed to have been waived by the act of obtaining such insurance, but such immunity is waived only to the extent that said board of education is indemnified by insurance for such negligence or tort.

Any contract of insurance purchased pursuant to this section must be issued by a company or corporation duly licensed and authorized to execute insurance contracts in this State and must by its terms adequately insure the county or city board of education against any and all liability for any damages by reason of death or injury to person or property proximately caused by the negligent acts or torts of the agents and employees of said board of education or the agents and employees of a particular school in a county or city administrative unit when acting within the scope of their authority or within the course of their employment. Any company or corporation which enters into a contract of insurance as above described with a county or city board of education, by such act waives any defense based upon the governmental immunity of such county or city board of education.

Every county or city board of education in this State is authorized and empowered to pay as a necessary expense the lawful premiums for such insurance.

Any person sustaining damages, or in case of death, his personal representative may sue a county or city board of education insured under this section for the recovery of such damages in any court of competent jurisdiction in this State, but only in the county of such board of education; and it shall be no defense to any such action that the negligence or tort complained of was in pursuance of governmental, municipal or discretionary function of such county or city board of education if, and to the extent, such county or city board of education has insurance coverage as provided by this section.

Except as hereinbefore expressly provided, nothing in this section shall be construed to deprive any county or city board of education of any defense whatsoever to any such action for damages or to restrict, limit, or otherwise affect any such defense which said board of education may have at common law or by virtue of any statute; and nothing in this section shall be construed to relieve any person sustaining damages or any personal representative of any decedent from any duty to give notice of such claim to said county or city board of education or to commence any civil action for the recovery of damages within the applicable period of time prescribed or limited by statute.

A county or city board of education may incur liability pursuant to this section only with respect to a claim arising after such board of education has procured liability insurance pursuant to this section and during the time when such insurance is in force.

No part of the pleadings which relate to or allege facts as to a defendant's insurance against liability shall be read or mentioned in the presence of the trial jury in any action brought pursuant to this section. Such liability shall not attach unless the plaintiff shall waive the right to have all issues of law or fact relating

to insurance in such an action determined by a jury and such issues shall be heard and determined by the judge without resort to a jury and the jury shall be absent during any motions, arguments, testimony or announcement of findings of fact or conclusions of law with respect thereto unless the defendant shall request a jury trial thereon: Provided, that this section shall not apply to claims for damages caused by the negligent acts or torts of public school bus, or school transportation service vehicle drivers, while driving school buses and school transportation service vehicles when the operation of such school buses and service vehicles is paid from the State Nine Months School Fund.

The several county and city boards of education in the State are hereby authorized and empowered to take title to school buses purchased with local or community funds for the purpose of transporting pupils to and from athletic events and for other local school activity purposes, and commonly referred to as activity buses. The provisions of this section shall be fully applicable to the ownership and operation of such activity school buses. (1955, c. 1256; 1957, c. 685; 1959, c. 573, s. 2; 1961, c. 1102, s. 4.)

Local Modification. — Mecklenburg and city of Charlotte: 1959, c. 931.

This section, in its nature, is not retroactive. Turner v. Gastonia City Bd. of Educ., 250 N.C. 456, 109 S.E.2d 211 (1959).

Waiver of Tort Immunity Depends on Action of Board. — The legislature has not waived immunity from tort liability as to county and city boards of education, except as to such liability as may be established under the Tort Claims Act, but has left the waiver of immunity from liability for torts to the respective boards, and then only to the extent such board has obtained liability insurance to cover negligence or torts. Fields v. Durham City Bd. of Educ., 251 N.C. 699, 111 S.E.2d 910 (1960).

Without Waiver Liability Limited to Tort Claims Act. — A county board of education, unless it has duly waived immunity from tort liability, as authorized in this section, is not liable in a tort action or proceeding involving a tort, except such liability as may be established under the Tort Claims Act. Huff v. Northhampton County Bd. of Educ., 259 N.C. 75, 130 S.E.2d 26 (1963); Brown v. Charlotte-Mecklenburg Bd. of Educ., 267 N.C. 740, 149 S.E.2d 10 (1966).

No action can be maintained against a local board of education to recover damages for a tort alleged to have been committed by it in the performance of its statutory duties, except insofar as its immunity to such suit has been waived pursuant to statutory authority. Clary v. Alexander County Bd. of Educ., 285 N.C. 188, 203 S.E.2d 820 (1974).

Sufficiency of Complaint. — In the absence of an allegation in the complaint in a tort action against a city board of education, to the effect that such board has waived its immunity by the procurement of liability insurance to cover such alleged negligence or tort, or that such board has waived its immunity as authorized in this section, such complaint does not state a cause of action. Fields v. Durham City Bd. of Educ., 251 N.C. 699, 111 S.E.2d 910 (1960); Clary v. Alexander County Bd. of Educ., 285 N.C. 188, 203 S.E.2d 820 (1974).

The ordinary rules of negligence apply to a public school or board of education just as they apply to any other landlord, if the board of education has waived the defense of sovereign immunity by purchasing a liability insurance policy, as permitted by this section. Clary v. Alexander County Bd. of Educ., 19 N.C. App. 637, 199 S.E.2d 738 (1973).

Applied in Dezern v. Asheboro City Bd. of Educ., 260 N.C. 535, 133 S.E.2d 204 (1963).

Stated in Steelman v. City of New Bern, 279 N.C. 589, 184 S.E.2d 239 (1971).

Cited in Branch Banking & Trust Co. v. Wilson County Bd. of Educ., 251 N.C. 603, 111 S.E.2d 844 (1960); McBride v. North Carolina State Bd. of Educ., 257 N.C. 152, 125 S.E.2d 393 (1962).

ARTICLE 6.

Powers and Duties of Superintendents.

§ 115-54. Residence, oath of office, and salary of superintendent. — Every superintendent shall reside in the county in which he is employed. The superintendent shall not teach, nor be regularly employed in any other capacity that may limit or interfere with his duties as superintendent. Each superintendent, before entering upon the duties of his office, shall take an oath

for the faithful performance thereof. The salary of the superintendent shall be in accordance with a State standard salary schedule, fixed and determined by the State Board of Education as provided by law; and such salary schedule for superintendents shall be determined on the same basis for both county and city superintendents and shall take into consideration the amount of work inherent to the office of both county and city superintendents; and such schedule shall be published in the same way and manner as the schedules for teachers' and principals' salaries are now published. (1955, c. 1372, art. 6, s. 1.)

Local Modification. — Maxton City School Administrative Unit: 1973, c. 846.

Dual Office Holding. — The office of county superintendent of public instruction is such an office as came within the prevention of former N.C. Const., Art. XIV, § 7 (see now N.C. Const., Art. VI, § 9), which prohibited the holding of more than one office by any person. Whitehead v. Pittman, 165 N.C. 89, 80 S.E. 976 (1914).

Cited in Jeffers v. Whitley, 165 F. Supp. 951 (M.D.N.C. 1958); Turner v. Gastonia City Bd. of Educ., 250 N.C. 456, 109 S.E.2d 211 (1959).

§ 115-55. Vacancies in office of superintendent. — In case of vacancy by death, resignation, or otherwise, in the office of a county or city superintendent, such vacancy shall be filled by the county or city board of education in which such vacancy occurred. During the time any county or city superintendent is on an approved leave of absence, without pay, an acting superintendent may be appointed in the same manner to serve during the interim period, which appointment shall be subject to the same approvals and to the same educational qualifications as provided for superintendents. In case such position is not filled immediately on a permanent or temporary basis, or in case of absence of a superintendent on account of illness or other approved reason, the board of education, by resolution duly adopted and recorded in the minutes of such board, may assign to an employee of such school board, with the approval of the State Superintendent of Public Instruction and the controller of the State Board of Education, any duty or duties of such superintendent which necessity requires be performed during such time: Provided, that if the duty of signing warrants and checks is so assigned, said board shall give proper notice immediately to State and local disbursing officials. (1955, c. 1372, art. 6, s. 2; 1959, c. 573, s. 3.)

Cited in Turner v. Gastonia City Bd. of Educ., 250 N.C. 456, 109 S.E.2d 211 (1959).

§ 115-56. Duties of superintendent as secretary to board of education. — County and city superintendents shall be ex officio secretary to their respective boards of education. As secretary to the board of education, the superintendent shall record all proceedings of the board, issue all notices and orders that may be made by the board, and otherwise be executive officer of the board of education. He shall see that the minutes of the meetings of the board of education are promptly and accurately recorded in the minute book which shall be kept in the office of the board of education and be open at all times to public inspection. It shall be the duty of every superintendent to visit the schools of his unit, to keep his board of education informed at all times as to the condition of the school plants in his administrative unit, and to make immediately provisions to remedy any unsafe or unsanitary conditions existing in any school building.

It shall be the duty of every superintendent to attend professional meetings conducted by the State Superintendent of Public Instruction and such other professional meetings as are necessary to keep him informed on educational matters.

It shall be the duty of every superintendent to furnish as promptly as possible to the State Superintendent when requested by him, information and statistics on any phase of the school work in his administrative unit.

The superintendent shall have authority to administer oaths to teachers and all other school officials when an oath is required of the same. (1955, c. 1372, art. 6, s. 3.)

Stated in Johnson v. Gray, 263 N.C. 507, 139 S.E.2d 551 (1965).

Cited in Turner v. Gastonia City Bd. of Educ., 250 N.C. 456, 109 S.E.2d 211 (1959).

§ 115-57. Duties of superintendents toward school personnel. — It shall be the duty of the superintendent to keep himself thoroughly informed as to all policies promulgated and rules adopted by the State Superintendent of Public Instruction and the State Board of Education, for the organization and government of the public schools. The superintendent shall notify and inform his board of education, the school committees, supervisors, principals, teachers, janitors, bus drivers, and all other persons connected with the public schools, of such policies and rules. In the performance of these duties, the superintendent shall confer, work, and plan with all school personnel to achieve the best methods of instruction, school organization and school government.

The superintendent shall hold each year such teachers' meetings and study groups as in his judgment will improve the efficiency of the instruction in the schools of his unit.

The superintendent shall distribute to all school personnel all blanks, registers, report cards, record books, bulletins, and all other supplies and information furnished by the State Superintendent and the State Board of Education and give instruction for their proper use.

It the superintendent shall fail in these duties, or such other duties as may be assigned him, he shall be subject, after notice, to an investigation by the State Superintendent or by his board of education for failure to perform his duties. For persistent failure to perform these duties, his certificate may be revoked by the State Superintendent, or he may be dismissed by his board of education. (1955, c. 1372, art. 6, s. 4.)

§ 115-58. Duties with respect to election of principals, teachers and other personnel. — It shall be the duty of the county superintendent to approve, in his discretion, the election of all teachers and personnel by the several school committees of the administrative unit. He shall then present the names of all principals, teachers and other school personnel to the county board of education for approval or disapproval, and he shall record in the minutes the action of the board in this matter. Provided, that in county administrative units which elect to operate as one school district without a school committee it shall be the duty of the county superintendent to recommend and the board of education to elect all principals, teachers, and other school personnel in the county administrative unit.

It shall be the duty of the city superintendent to record in the minutes the action of the city board of education in the election of all principals, teachers and other school personnel elected upon the recommendation of the superintendent. (1955, c. 1372, art. 6, s. 5; 1965, c. 584, s. 5.)

Opinion of Attorney General. — Mr. William E. Terry, Superintendent, Stokes County Board of Education, 40 N.C.A.G. 250 (1969).

Stated in Givens v. Poe, 346 F. Supp. 202 (W.D.N.C. 1972).

§ 115-59. School organization statement and allocation of instructional personnel. — (a) Each year the superintendent of each school administrative unit shall submit to the State Board of Education statements, certified by the chairman of the Board of Education, showing the organization of the schools in his unit and any additional information the State Board may require. On the basis of the organization statements, and any other information considered relevant, the State Board of Education shall determine for each administrative unit the number of teachers and other instructional personnel to be included in the State budget.

(b) The State Board of Education shall allocate teachers and instructional personnel to the various administrative units in the following separate categories: (i) general teachers, including classified principals, (ii) vocational teachers, (iii) special education teachers.

(c) The State Board of Education is authorized to promulgate rules and regulations to make the allotment of instructional personnel and teachers.

(d) The allotment of classified principals shall be one principal for each duly constituted school with seven or more state-allotted teachers and shall be included in the calculation of the allotment of general teachers set out in (b)(i) of this section.

(e) Upon receipt of the allotments, local boards of education shall organize schools and assign teachers to achieve the following class size maximums:

(1) No more than 26 students per teacher in average daily membership for grades one through three.

(2) No more than 33 students per teacher in average daily membership for the upper elementary grades.

(3) No more than 35 students per class except as permitted by local boards of education and no more than 150 students per day in average daily membership for teachers in high schools and junior high schools except as permitted by regional accrediting agencies.

(f) When class-size maximums are achieved, a local board of education may assign other teachers to teaching or nonteaching duties in the various schools.

(g) It shall be the responsibility of local boards of education to determine if any exceptions occur during the school year in the allowed maximums. If additional pupils are enrolled so as to cause assignment of pupils in excess of the allowed maximums, except for an emergency or act of God, it shall be the duty of any affected teacher and of the principal to notify the superintendent, who shall immediately report the deviation to the local board of education. Upon notification of excess deviations in the maximum class size, local boards shall take correctional steps and shall transfer teaching positions between schools, if necessary, to correct the excess deviation. If the local board cannot remedy the situation, it shall immediately apply to the State Board of Education for contingency funds for additional personnel to correct exceptions. Excess deviations which cannot be corrected by transfer of teachers and by use of contingency funds shall be temporarily allowed with permission of the State Board of Education.

At the end of the first month of school each year, the superintendent of each administrative unit shall file a report for each school with the State Board of Education. This report shall be filed on forms furnished by the Board and shall indicate the complete organization of each school, duties of each teacher or other instructional personnel, and class size or teaching load of each teacher.

It shall be the duty of local boards of education to provide adequate classroom facilities to meet the requirements of this section. (1955, c. 1372, art. 6, s. 6; 1963, c. 688, s. 3; 1965, c. 584, s. 6; 1969, c. 539; 1973, c. 770, ss. 1, 2.)

Editor's Note. — The 1973 amendment rewrote this section.

Stated in North Carolina Teachers Ass'n v. Asheboro City Bd. of Educ., 393 F.2d 736 (4th Cir. 1968).

Cited in Fremont City Bd. of Educ. v. Wayne County Bd. of Educ., 259 N.C. 280, 130 S.E.2d 408 (1963).

§ 115-60. Superintendents shall keep proper financial records. — It shall be the duty of each superintendent to keep in his office a complete, accurate and detailed record of all financial transactions of his board of education. Such records shall be kept in accordance with modern accounting methods and as prescribed and approved by the State Board of Education. If any superintendent shall fail to keep the records of the acts of the board of education so that they may be audited in accordance with law, the board of education may remove him from office. (1955, c. 1372, art. 6, s. 7.)

§ 115-61. County superintendents shall keep record of local taxes. — County superintendents shall keep a separate financial record of each special taxing district in the county and no part of any funds belonging to one district shall be used for any other district, or for any other purpose than to meet the lawful expenses of such district to which the funds collected belong. (1955, c. 1372, art. 6, s. 8; 1965, c. 584, s. 7.)

§ 115-62. Record of fines, forfeitures and penalties. — It shall be the duty of the county superintendent to keep a record of all fines, forfeitures and penalties due the school fund, and to this end all county officials who in any way handle such funds shall on demand report the same to the county superintendent; and he shall see that these funds are deposited with the treasurer and placed to the credit of the school fund. The county accountant or auditor shall furnish the superintendent on the first day of each month a list in detail of all such funds that may have been paid into the school fund during the preceding month. (1955, c. 1372, art. 6, s. 9.)

§ 115-63. Superintendents must furnish boundaries of special taxing districts. — It shall be the duty of county superintendents, and of city superintendents where their administrative units are not coterminous with city or township limits, to furnish tax listers at tax listing time the boundaries of each taxing district and city administrative unit in which a special tax will be levied to the end that all property in such district or unit may be properly listed. (1955, c. 1372, art. 6, s. 10.)

§ 115-64. Disbursement of local funds. — County and city local school funds shall be disbursed in the same manner as State school funds are disbursed. It shall be the duty of the county superintendent in addition to approving and signing State vouchers to approve and sign all vouchers for the disbursement of all county and district funds except funds belonging to a city administrative unit. The county treasurer shall honor no voucher that is not first approved and signed by the county superintendent. No voucher shall be signed by the county or city superintendent for more money than is provided in the county or city school budget. The county superintendent shall not sign a voucher drawn on district funds for more money than is apportioned to or raised by the special tax during the fiscal year of a special taxing school district.

County and city superintendents shall not approve and sign the voucher of any teacher who does not hold a certificate as required by law, nor for more money than the salary schedule in force in the city administrative unit or special taxing district entitles the teacher to receive.

It shall be the duty of county and city superintendents to sign all vouchers issued by order of their respective boards of education and signed by the

chairman, and no voucher shall be paid by the county or city treasurer that is not thus signed. (1955, c. 1372, art. 6, s. 11.)

Approval of County Superintendent Required.—The treasurer of the school fund cannot pay out any of the money coming into his hands as such except upon order approved by the county superintendent. County Bd. v. County of Wake, 167 N.C. 114, 83 S.E. 257 (1914).

§ 115-65. Superintendent shall not pay teacher without contract. — No voucher for the salary of a principal or teacher shall be signed by the county or city superintendent unless a copy of the contract has been filed with him: Provided, that substitute and interim teachers may be paid under rules of the State Board of Education. (1955, c. 1372, art. 6, s. 12.)

§ 115-66. When superintendent may withhold pay of teachers. — The chairman and secretary of a county or city board of education may refuse to sign the salary voucher for the pay of any supervisor, principal or teacher who delays or refuses to render such reports as are required by law. But whenever the reports are delivered in accordance with law, the vouchers shall be signed and the supervisor, principal, or teacher paid. (1955, c. 1372, art. 6, s. 13.)

§ 115-67: Repealed by Session Laws 1971, c. 883.

§ 115-68. City superintendents, powers, duties and responsibilities. — All the powers, duties and responsibilities imposed by law upon the superintendents of county administrative units shall, with respect to city administrative units, be imposed upon, and exercised by, the superintendents of city administrative units, in the same manner and to the same extent, insofar as applicable thereto, as such powers and duties are exercised and performed by superintendents of county administrative units with reference to said county administrative units. (1955, c. 1372, art. 6, s. 15.)

ARTICLE 7.

School Committees—Their Duties and Powers.

§ 115-69. Eligibility and oath of office; holding other offices. — Each school committeeman or member of an advisory council shall be a person of intelligence, of good moral character, of good business qualifications, and one who is known to be in favor of public education and who resides in the district; and before entering upon the duties of his office, he shall take oath for the faithful performance thereof, which oath may be taken before the county superintendent.

No person, while employed as teacher in either a public school or a private school, or while serving as a member of any county or city board of education or serving as an employee of the schools shall be eligible to serve as a member of a district committee.

A school committeeman appointed to a school committee under G.S. 115-70 or a councilman appointed to an advisory council is hereby declared to be an office that, with the exceptions provided above, may be held concurrently with any appointive office pursuant to Article VI, Sec. 9, of the Constitution, but any person holding an elective office shall not be eligible to serve on a school committee or advisory council. (1955, c. 1372, art. 7, s. 1; 1971, c. 704, s. 7.)

§ 115-70. Appointment; number of members; terms; vacancies; advisory council. — At the first regular meeting during the month of April, 1965, or as soon thereafter as practicable, and biennially thereafter, the county board of education named by the General Assembly which convened in February of such

year or elected at the preceding general election, as the case may be, shall elect and appoint school committees for each of the several districts in their counties, consisting of not less than three, nor more than five persons, for each school district, whose term of office shall be for two years: Provided, that in county school administrative units organized as one district, the county board of education need not appoint a district school committee, in which case the county board of education shall assume the duties of the district school committee or may authorize an advisory council, or councils, to assume such duties as it may legally delegate to them. In the event of death, resignation or removal from the district of any member of said school committee, the county board of education shall be empowered to select and appoint his or her successor to serve the remainder of the term; provided, that in units desiring the same, by action of the county board of education, one third of the members may be selected for a term of one year, one third of the members for a term of two years, and one third of the members for a term of three years, and thereafter all members for a term of three years from the expiration of said terms. This section shall not have the effect of repealing any local or special acts relating to the appointment or terms of office of school committees.

A county board of education may appoint an advisory council for any school or schools within the administrative unit. The purpose and function of an advisory council shall be to serve in an advisory capacity to the board on matters affecting the school or schools for which it is appointed. The organization, terms, composition and regulations for the operation of such advisory council shall be determined by the board. (1955, c. 1372, art. 7, s. 2; 1957, c. 686, s. 2; 1965, c. 584, s. 8.)

Local Modification. — Cumberland: 1969, c. 238; Edgecombe: 1961, c. 65; Jackson: 1963, c. 228; Polk: 1959, c. 442; North Surry School District: 1969, c. 613.

Session Laws 1961, c. 205, as amended by Session Laws 1963, c. 239, relating to school committees and increasing the number of members from five to nine, applies only to Alamance, Caswell, Columbus, Duplin, Hoke, Madison, Onslow, Orange, Rutherford and Sampson.

Opinions of Attorney General. — Mr. Ferd L. Davis, Attorney, Wake County Board of Education, 40 N.C.A.G. 200 (1969).

The law does not give a committee corporate status. Revels v. Oxendine, 263 N.C. 510, 139 S.E.2d 737 (1965).

Nor does the law authorize a committee to sue or defend. Revels v. Oxendine, 263 N.C. 510, 139 S.E.2d 737 (1965).

Committees are not given final authority. Their acts are under, subordinate to, and controlled by, the county or city boards. Revels v. Oxendine, 263 N.C. 510, 139 S.E.2d 737 (1965).

Removal of Committeeman. — A school committeeman for a district, although appointed by the county board of education, holds for a definite term, and is not removable at the will or caprice of the county board of education, but may be removed only for cause after notice and an opportunity to be heard. Russ v. Board of Educ., 232 N.C. 128, 59 S.E.2d 589 (1950).

§ 115-71. Organization of school committee; meetings. — The school committee, at its first meeting after the membership has been completed by the county board of education, shall elect from its number, a chairman and secretary, who shall keep a record of its proceedings in a book to be kept for that purpose, which shall be open to public inspection. The names and addresses of the chairman and secretary shall be reported to the county superintendent and recorded by him. The committee shall meet as often as the school business of the district may require. (1955, c. 1372, art. 7, s. 3.)

§ 115-72. How to employ principals, teachers, janitors and maids. — The district committee, upon the recommendation of the county superintendent of schools, shall elect the principals for the schools of the district, subject to the approval of the county board of education. The principal of each school shall nominate and the district committee shall elect the teachers for all the schools

of the district, subject to the approval of the county superintendent of schools and the county board of education. Likewise, upon the recommendation of the principal of each school of the district, the district committee shall appoint janitors and maids for the schools of the district, subject to the approval of the county superintendent of schools and the county board of education. No election of a principal or teacher, or appointment of a janitor or maid, shall be deemed valid until such election or appointment has been approved by the county superintendent and the county board of education. No teacher under 18 years of age may be employed, and the election of all teachers and principals and the appointment of all janitors and maids shall be done at regular or called meetings of the committee.

In the event the district committee and the county superintendent are unable to agree upon the nomination and election of a principal or the principal and the district committee are unable to agree upon the nomination and election of teachers or appointment of janitors or maids, the county board of education shall select the principal and teachers and appoint janitors and maids, which selection and appointment shall be final.

The distribution of the teachers and janitors among the several schools of the district shall be subject to the approval of the county board of education. (1955, c. 1372, art. 7, s. 4; 1965, c. 584, s. 9.)

Jurisdiction of County Board of Education to Elect Principal. — The county board of education is not authorized to elect a principal of a school unless it appears that the local school authorities are in disagreement as to such election, and therefore, in a suit to compel the county board to approve an election made by the local school authorities, a plea in abatement on the ground that the county board had already elected another to the position is probably overruled in the absence of a showing of disagreement by the local school authorities. Harris v. Board of Educ., 216 N.C. 147, 4 S.E.2d 328 (1939).

Validity of Election. — The election of a principal or teacher by the school committee of a district has no validity whatever until such election has been approved by both the county superintendent of schools and the county board of education. Iredell County Bd. of Educ. v. Dickson, 235 N.C. 359, 70 S.E.2d 14 (1952).

Refusal of the county superintendent to approve the election of a teacher on the ground that he did not have sufficiently high certificates as a teacher and that his election as a teacher would not be for the best interests of the school will not sustain the finding of the trial judge that the refusal of the county superintendent of schools to approve the election was arbitrary, captious, and without just cause, and a mandamus to cause his approval is improvidently issued by the lower court. Cody v. Barrett, 200 N.C. 43, 156 S.E. 146 (1930).

Liability of Committeeman on Employment Contract. — In Robinson v. Howard, 84 N.C. 152 (1881), it was held that a school committeeman was not liable personally on a contract by which he employed a teacher, and that the remedy was by mandamus to compel the payment of the money by the proper officer in the way provided by law. If, though, the act is wrongful and malicious, an action will lie against the officer in his personal capacity to recover damages for the wrong committed by him. Spruill v. Davenport, 178 N.C. 364, 100 S.E. 527 (1919).

As to reelection of principal or teacher, see Iredell County Bd. of Educ. v. Dickson, 235 N.C. 359, 70 S.E.2d 14 (1952).

A court may not usurp the discretionary power of the school committee, but must judge the constitutionality of its action on the basis of the facts which were before the board and on its logic. Johnson v. Branch, 364 F.2d 177 (4th Cir. 1966).

Action of School Committee in Refusing to Renew Teacher's Contract Held Arbitrary and Capricious. — See Johnson v. Branch, 364 F.2d 177 (4th Cir. 1966) (decided prior to 1967 amendment to § 115-142, providing contracts continue from year to year until board of education determines employee is not to be retained for succeeding school year).

§ 115-73. Committee's responsibility as to school property. — It shall be the duty of the school committee to protect all school property in its district. To this end, it is given custody of all schoolhouses, schoolhouse sites, grounds, textbooks, apparatus, and other school property in the district, with full power to control same as it may deem best for the interests of the public schools and

the cause of education, but not in conflict with the rules and regulations of the county board of education. It shall be the duty of the committee to report any misuse or damage of school property immediately to the county board of education: Provided, that if the committee is unable or shall fail to take due care of all school property of the district, the county board of education may designate some responsible citizen of the district to have special charge of the property during vacation. (1955, c. 1372, art. 7, s. 5.)

SUBCHAPTER III. SCHOOL DISTRICT ORGANIZATION.

ARTICLE 8.

Creating and Consolidating School Districts and School Administrative Units.

§ 115-74. Creation and modification of school districts by State Board of Education. — The State Board of Education, upon the recommendation of the county board of education, shall create in any county administrative unit a convenient number of school districts. Such district organization may be modified in the same manner in which it was created when it is deemed necessary. Provided that when changes in district lines are made between and among school districts that have voted upon themselves the same rate of supplemental tax, such changes in district lines shall not have the effect of abolishing any of such districts or of abolishing any supplemental taxes that may have been voted in any of such districts: Provided further, that nothing in this section shall affect the right of any city school administrative unit or special tax district which now exists for the purpose of retiring debt service, to have the indebtedness of such district taken over by the county as provided by law, and nothing herein shall be construed to restrict the county board of education or the board of county commissioners in causing such indebtedness to be assumed by the county as provided by law. (1955, c. 1372, art. 8, s. 1; 1959, c. 432; 1967, c. 643, s. 2.)

Cross Reference. — As to limitation on power of legislature to change lines of school districts, see N.C. Const., Art. II, § 24.

Constitutionality of Article. — For case holding constitutional a former statute covering the same subject matter as this Article, see Sparkman v. Board of Comm'rs, 187 N.C. 241, 121 S.E. 531 (1924).

Methods of Changing School District. — See Kreeger v. Drummond, 235 N.C. 8, 68 S.E.2d 800 (1952).

Courts Will Not Interfere in Absence of Abuse of Discretion. — Unless the school authorities act contrary to law, or there is a manifest abuse of discretion on their part, the courts will not interfere with their action in creating or consolidating school districts, or in the discharge of any other discretionary duty conferred upon them by law. Kreeger v. Drummond, 235 N.C. 8, 68 S.E.2d 800 (1952).

The courts will not interfere with the control and supervision of the county board of education in the exercise of its statutory discretion given in the formation of school districts and their consolidation, or intervene in behalf of anyone who supposes himself to be aggrieved by their action therein, except upon a clear showing that it was acting contrary to law, and then they will only restrain its action to the extent necessary to keep it within the law and the rightful exercise of its powers. Davenport v. Board of Educ., 183 N.C. 570, 112 S.E. 246 (1922).

Abolition of Special School Districts. — For cases construing former statute abolishing special school districts, see Hickory v. Catawba County, 206 N.C. 165, 173 S.E. 56 (1934); Board of Educ. v. Burgin, 206 N.C. 421, 174 S.E. 286 (1934).

Quoted in Peacock v. County of Scotland, 262 N.C. 199, 136 S.E.2d 612 (1964).

Cited in United States v. Halifax County Bd. of Educ., 314 F. Supp. 65 (E.D.N.C. 1970).

§ 115-74.1. Consolidation and merger of county and city school administrative units located in the same county. — City school administrative units may be consolidated and merged with contiguous city school

administrative units and with county school administrative units upon approval by the State Board of Education of a plan for consolidation and merger submitted by the boards of education involved and bearing the approval of the board of county commissioners.

County and city boards of education desiring to consolidate and merge their school administrative units may do so by entering into a written plan which shall set forth the conditions of merger. The provisions of the plan shall be consistent with the General Statutes and shall contain, but not be limited to, the following:

(1) The name by which the merged school administrative unit shall be identified and known
(2) The effective date of the merger
(3) The establishment and maintenance of a board of education which shall administer all the public schools of the newly created unit, including
   a. The termination of any terms of office proposed in the reorganization of the board
   b. The method of constituting and continuing the board of education, the length of the members' terms of office, the dates of induction into office, the organization of the board, the procedure for filling vacancies, and the compensation to be paid members of the board for expenses incurred in performance of their duties
(4) The authority, powers, and duties of the board of education with respect to the employment of personnel, the preparation of budgets, and any other related matters which may be particularly applicable to the merged unit not inconsistent with the General Statutes
(5) The transfer of all facilities, properties, structures, funds, contracts, deeds, titles, and other obligations, assets and liabilities to the board of education of the merged unit
(6) Whether or not there shall be continued in force any supplemental school tax which may be in effect in either or all administrative units involved
(7) A public hearing, which shall have been announced at least 10 days prior to the hearing, on the proposed plan of merger
(8) A statement as to whether the question of merger, in accordance with the projected plan, is to be contingent upon approval of the voters in the affected area
(9) Any other condition or prerequisite to merger, together with any other appropriate subject or function that may be necessary for the orderly consolidation and merger of the school administrative units involved.

The plan referred to above shall be mutually agreed upon by the city and county boards of education involved and shall be accompanied by a certification that the plan was approved by the board of education on a given day and that the action has been duly recorded in the minutes of said board, together with a certification to the effect that the public hearing required above was announced and held. The plan, together with the required certifications, shall then be submitted to the board of county commissioners for its concurrence and approval. After such approval has been received the plan shall be submitted to the State Board of Education for the approval of said State Board and the plan shall not become effective until such approval is granted. Upon approval by the State Board of Education the plan of consolidation and merger shall become final and shall be deemed to have been made by authority of law and shall not be changed or amended except by an act of the General Assembly. The written plan of agreement shall be placed in the custody of the board of education operating and administering the public schools in the merged unit and a copy filed with the Secretary of State.

The plan may be, but it is not required that it be submitted for the approval of the voters of the geographic area affected in a referendum or election called for such purpose, and such elections or referendums if held shall be held under

the provisions governing elections or referendums as set forth in G.S. 115-122, with authority of the board of county commissioners to have such election or referendum conducted by the board of elections of the county.

Upon approval of the plan of consolidation or merger by the State Board of Education, or upon approval of the plan of consolidation or merger by the voters in a referendum or election called for such purpose, and as soon as a provisional or interim board of education of the merged unit, or a permanent board of education of the merged unit, enters in and upon the duties of the administration of the public schools of the consolidated or merged unit, then the former boards of education and all public officers of the former boards of education of the separate units thus merged shall stand abolished, and said separate boards of education or administrative units thus merged shall stand dissolved and shall cease to exist for any and all purposes. All consolidations and mergers of county and city boards of education and of county and city administrative units heretofore agreed to and finally approved, and all consolidation or merger proceedings entered into prior to June 9, 1969, are hereby declared to be effective, legal and according to law notwithstanding any defect in the merger or consolidation proceedings and notwithstanding any dissolution of the separate boards of education and public officers of the former, separate school units. (1967, c. 643, s. 3; 1969, c. 742.)

Local Modification. — Wilson: 1973, c. 321.

Opinions of Attorney General. — Mr. R.A. Collier, Sr., Attorney for Statesville City School Board, 40 N.C.A.G. 221 (1969).

Effect of Merger of County and City Unit on Supplemental Taxes in Effect in Each Unit. — See opinion of Attorney General to Mr. Thomas A. Banks, Wake County Attorney, 40 N.C.A.G. 228 (1970).

§ 115-74.2. Merger of two or more adjoining county school administrative units. — (a) Boards of education of contiguous counties or boards of education in a group of counties in which each county is contiguous with at least one other county in the group, and any city administrative unit located in counties to be merged, may merge school administrative units upon approval by the State Board of Education of a written plan for merger submitted by the boards of education involved and bearing the approval of the tax-levying body for the school units. The plan shall be consistent with the General Statutes, shall contain provisions covering those items listed in G.S. 115-74.1 (providing for the merger of units in the same county), and shall contain any other provision deemed necessary or appropriate by the State Board of Education or the local boards of education for the merger of school units in two or more counties.

(b) The plan of merger, including any arrangements for financing or taxing for the schools in the new administrative unit, may be, but is not required to be, submitted for the approval of the voters of the geographic area affected in a referendum or election called for the purpose of approving these matters. Such elections or referendums, if held, shall be held under the provisions governing elections or referendums as set forth in G.S. 115-122. Each board of county commissioners shall have authority to have such elections or referendums conducted by the board of elections of its county under the provisions set forth in G.S. 115-122.

(c) If twenty percent (20%) of the qualified voters of a county to be merged, petition the board of county commissioners of their county for an election as to whether their county shall be included in the proposed merger, the board of county commissioners shall call an election on this question for its county under the provisions of G.S. 115-122. The petition must be submitted to the board of county commissioners within 10 days following the public hearing required by G.S. 115-74.1 on the proposed plan of merger. The board of county

commissioners shall have authority to have such an election conducted by the board of election of its county under the provisions set forth in G.S. 115-122.

(d) Boards of education considering a merger of two or more counties may spend money necessary for studying and preparing for such a merger. (1969, c. 828.)

§ 115-75. Districts formed of portions of contiguous counties. — School districts may be formed out of contiguous counties by agreement of the county boards of education of the respective counties subject to the approval of the State Board of Education. Rules for the organization, support and operation of districts so formed are subject to the agreement of the boards of education concerned, and as a guide to the working out of such agreements the formulas contained in G.S. 115-123 should be followed as far as applicable. (1955, c. 1372, art. 8, s. 2.)

§ 115-76. Consolidation of districts and discontinuance of schools. — County boards of education shall have the power and authority to consolidate schools located in the same district, and with the approval of the State Board of Education, to consolidate school districts or other school areas over which the board has full control, whenever and wherever in its judgment the consolidation will better serve the educational interests of the county or any part of it: Provided, existing schools having suitable buildings shall not be abolished until the county board of education has made ample provisions for transferring all children of said school to some other school.

In determining whether two or more public schools shall be consolidated, or in determining whether or not a school shall be closed and the pupils transferred therefrom, the State Board of Education and the boards of education of the several counties shall observe and be bound by the following rules, to wit:

(1) In any question involving the discontinuance or consolidation of any high school with an average daily attendance of 60 or more pupils, the board of education of the county in which such school is located and the State Board of Education shall cause a thorough study of such school to be made, having in mind primarily the welfare of the students to be affected by a proposed consolidation and including in such study, among other factors, geographic conditions, anticipated increase or decrease in school enrollment, the inconvenience or hardship that might result to the pupils to be affected by such consolidation, the cost of providing additional school facilities in the event of such consolidation, and the importance of such school to the people of the community in which the same is located and their interest in and support of same. Before the entry of any order of consolidation, the county board of education shall provide for a public hearing in regard to such proposed consolidation, at which hearing the county and State boards of education and the public shall be afforded an opportunity to express their views. Upon the basis of the study so made and after such hearing, said boards may, in the exercise of their discretion and by concurrent action, approve the consolidation proposed: Provided, however, that when a high school is ordered closed, pursuant to law, the pupils attending such school may be assigned to another high school, if the board of education of the administrative unit in which such school is located consents to such assignment.

(2) Provision shall not be made by the State Board of Education for the operation of a high school with an average daily attendance of less than 60 pupils unless the State Board of Education and the State Superintendent of Public Instruction, after a careful survey by them, find that geographic or other conditions make it impractical to provide

for such pupils otherwise. Upon such finding, the State Board of Education may make provision for the operation of such school.

(3) Notwithstanding the limitations imposed by the provisions of subdivision (2) of this section, the State Board of Education shall make provision for the continued operation of any high school now operating in any county administrative unit and having an average daily attendance of at least 45 but fewer than 60 pupils, and shall allot to such school the number of teachers to which it may be entitled pursuant to law and rules of the State Board of Education if the continued operation of such school be requested by the board of education of such county by the inclusion of such school in the organization statement for the following year filed pursuant to the provisions of law: Provided, however, that at the time of making such request, the county board of education presents to the State Board of Education a certified statement that it has on hand and allocated for such purpose sufficient funds to pay the salaries, in accordance with the State standard salary schedule, of such additional teacher or teachers for said school as may be required in order to comply with minimum teacher requirements for a standard high school as now or hereafter defined and sufficient funds to pay the county's contribution for such teacher or teachers to the Teachers' and State Employees' Retirement System of North Carolina, as provided by G.S. 135-8(c), and that said county board of education will employ such teacher or teachers.

For the purpose of providing the funds required by the proviso of this subdivision, the boards of commissioners of the several counties are authorized to appropriate nontax funds, and the several county boards of education are authorized to accept and use privately donated funds.

(4) The provisions of this section shall not deprive any city or county board of education of the authority to assign or enroll any and all pupils in schools in accordance with the provisions of G.S. 115-176 to 115-179. (1955, c. 1372, art. 8, s. 3.)

Concurrent Action by County and State Boards of Education Required for Consolidation. — Under subdivision (1) of this section concurrent action by the county board of education and the State Board of Education after the required public hearing is essential in order to consolidate any two high schools with an average daily attendance of 60 or more pupils. Dilday v. Beaufort County Bd. of Educ., 267 N.C. 438, 148 S.E.2d 513, 149 S.E.2d 345 (1966).

Section requires only that a public hearing be provided; it does not specify any particular form, location, or notice for such hearing. Lutz v. Board of Educ., 282 N.C. 208, 192 S.E.2d 463 (1972).

Discretion as to Location of School Vested in Board of Education. — Whether a change should be made in the location of the school, as well as the selection of the site for a new one, is vested in the sound discretion of the board of education. Its action cannot be restrained by the courts unless there has been a violation of some provision of law or a manifest abuse of discretion. Lutz v. Board of Educ., 282 N.C. 208, 192 S.E.2d 463 (1972).

Sufficient Compliance with Subdivision (1). — See Dilday v. Beaufort County Bd. of Educ., 267 N.C. 438, 148 S.E.2d 513, 149 S.E.2d 345 (1966); Lutz v. Board of Educ., 282 N.C. 208, 192 S.E.2d 463 (1972).

Decisions under Former Statutes. — As to consolidation of tax and nontax districts, see Paschal v. Johnson, 183 N.C. 129, 110 S.E. 841 (1922); Perry v. Board of Comm'rs, 183 N.C. 387, 112 S.E. 6 (1922); Barnes v. Leonard, 184 N.C. 325, 114 S.E. 398 (1922); Board of Educ. v. Bray Bros. Co., 184 N.C. 484, 115 S.E. 47 (1922); Gates School Dist. Comm. v. Gates County Bd. of Educ., 235 N.C. 212, 69 S.E.2d 529 (1952); Gates School Dist. Comm. v. Gates County Bd. of Educ., 236 N.C. 216, 72 S.E.2d 429 (1952). As to issuance of bonds, see Paschal v. Johnson, 183 N.C. 129, 110 S.E. 841 (1922). As to reallocation of funds from bond issues, see Gore v. Columbus County, 232 N.C. 636, 61 S.E.2d 890 (1950). As to consolidation as prerequisite to closing high school operated as union school, see Kreeger v. Drummond, 235 N.C. 8, 68 S.E.2d 800 (1952). As to providing ample facilities in consolidated district, see Kreeger v. Drummond, 235 N.C. 8, 68 S.E.2d 800 (1952). As to discretionary authority

of county board of education, see Gore v. Columbus County, 232 N.C. 636, 61 S.E.2d 890 (1950). As to enjoining or setting aside creation or consolidation of school districts, see Gates School Dist. Comm. v. Gates County Bd. of Educ., 236 N.C. 216, 72 S.E.2d 429 (1952). As to circumstances insufficient to show abuse of discretion in consolidating school districts, see Gates School Dist. Comm. v. Gates County Bd. of Educ., 236 N.C. 216, 72 S.E.2d 429 (1952). As to transfer of pupils, see Kreeger v. Drummond, 235 N.C. 8, 68 S.E.2d 800 (1952).

§ 115-77. Enlarging tax districts and city units by permanently attaching contiguous property. — The county boards of education with the approval of the State Board of Education may transfer from nontax territory and attach permanently to local tax districts or to city administrative units, real property contiguous to said local tax districts or city administrative units, upon the written petition of the owners thereof and the taxpayers of the family or families living on such real property, and there shall be levied upon the property of each individual in the area so attached, including landowners and tenants, the same tax as is levied upon other property in said district or unit: Provided, that such transfer shall be subject to the approval of the board of education of such city unit or the committee of such tax district, as the case may be. Provided the petition must be signed by a majority of the persons who are the owners thereof and a majority of the taxpayers of the families living on such real property on the date the petition is filed with the county board of education. Provided further, that a person or corporation owning only an easement in real property shall not be considered an owner of said property within contemplation of this section; and provided further that no right of action or defense founded upon the invalidity of such transfer shall be asserted, nor shall the validity of such transfer be open to question in any court upon any ground whatever, except in an action or proceeding commenced within 60 days after the approval of such transfer is given by the State Board of Education.

Any qualified voter residing in the area attached shall be permitted to vote in any election for members of the board of education having jurisdiction over the attached area. (1955, c. 1372, art. 8, s. 4; 1959, c. 573, s. 4; 1971, c. 672; 1973, c. 1155.)

Editor's Note. — The 1973 amendment added the last paragraph.

SUBCHAPTER IV. REVENUE FOR THE PUBLIC SCHOOLS.

ARTICLE 9.

County and City Boards of Education and Budgets.

§ 115-78. Objects of expenditure for operation of public schools. — (a) The objects of expenditure for the operation of the public school system shall be listed by county and city boards of education in the school budget under three separate funds: the current expense fund; the capital outlay fund; and the debt service fund.

(b) The current expense fund shall include:

(1) General Control. — Salaries and travel of superintendent, assistant superintendent, business manager, and attendance counselor; salaries of clerical assistants, property costs clerks, and the treasurer, including cost of his bond; per diem and travel of board of education; office expenses, cost of audit, elections and attorneys' fees and other necessary expenses of general control.

(2) Instructional Service. — Salaries of elementary and high school teachers and principals; salaries, travel, and office expense of supervisors;

salaries and travel of teachers of vocational education including agriculture, home economics, trades and industries and distributive education; clerical and travel expenses of principals; commencement expenses; and instructional supplies.

(3) Operation of Plant. — Wages of janitors, cost of fuel, water, light, power, janitors' supplies, and telephones in school buildings.

(4) Maintenance of Plant. — Cost of repairs to buildings and grounds, including salary of the superintendent of grounds, and teacherages; repairs and replacements of furniture and instructional apparatus, and repairs and replacements of heating, electrical and plumbing equipment.

(5) Fixed Charges. — Cost of rents, insurance on buildings and equipment, workmen's compensation, compensation to injured employees, payment for injuries to school children, retirement paid to the State and paid to employees, and tort claims.

(6) Auxiliary Agencies. — Cost of transportation, including wages of drivers, gas, oil and grease; gas storage and equipment; salaries of mechanics, repair parts and batteries; tires and tubes; insurance, license and title fees; garage equipment, contract transportation, major replacements of chassis and bodies, and bus travel of principals; cost of operation and maintenance of school libraries; replacement and rental of textbooks including salaries of clerical assistants; health, including clinics and recreation; costs of interscholastic, intrascholastic or intramural athletic or physical education programs; aid to indigent pupils; night schools; summer schools; adult education; lunchrooms; veterans' training; and interest on temporary loans.

(7) Special program for hearing-impaired children at the preschool age level and for school-age children who are hard of hearing, includes cost of purchasing instructional apparatus and equipment, salaries for trained instructors and teachers.

(c) The capital outlay fund shall provide for the purchase of sites and the erection of all school buildings properly belonging to school plants; improvement of new school grounds; alteration and addition to buildings; purchase of fields, bleachers, and other structures for interscholastic, intrascholastic or intramural athletic or physical education programs; purchase of furniture, equipment, trucks, automobiles, school buses, and other necessary items for the operation and administration of the public schools in the following divisions:

(1) New Buildings and Grounds. — Estimated total cost of new buildings including grounds, heating, plumbing and electrical equipment, furniture and instructional apparatus, architect and engineering fees, and other costs; provided, the estimated cost of the site shall be included in the total estimated cost of the building but not as a separate item; provided further, that no contract for the purchase of the site shall be executed nor any funds expended therefor without the approval of the board of county commissioners as to the amount to be spent for the site; and in case of a disagreement between a board of education and a board of county commissioners as to the amount to be spent for the site, the procedure provided in G.S. 115-87 shall, insofar as the same may be applicable, be used to settle the disagreement.

(2) Old Buildings and Grounds. — Cost of additional sites and improvement of grounds, alterations and additions to existing buildings, installing new heating, electrical or plumbing systems, and adding additional furniture and instructional apparatus.

(3) Auxiliary Agencies. — Cost of new library and textbooks, new school buses operated for first time as an addition to fleet, activity buses, garage building and equipment, new and additional equipment for the

superintendent's office, and interest on temporary loans for capital outlay fund.

(d) The debt service fund shall provide for the payment of principal and interest on indebtedness incurred for school purposes, as such principal and interest fall due, and the payment of moneys required to be paid into sinking funds. The term "indebtedness," as used in this Article, includes bonds, notes and State loans, including, in the case of the county debt service fund, indebtedness assumed by the county as well as indebtedness incurred by the county. Where the indebtedness for school purposes of any city, town, school district, school taxing district, township, city administrative unit or other political subdivision in a county (hereinafter referred to in this Article as "local district") has not been assumed by the county, the county debt service fund shall provide for payment, apportioned on a per capita basis as provided in subsection (d) of G.S. 115-80, of principal and interest on indebtedness of local districts, as such principal and interest fall due, and for payment of moneys required to be paid into sinking funds of local districts.

(e) Other objects of expenditure, including educational television, may be included in the school budget when authorized by the General Assembly, the State Board of Education, or county and city boards of education, when funds for the same are made available.

(f) Funds for the purchase of insurance to protect school board members and school administrators from liability incurred in the exercise of duties within the scope of their authority may be included in the school budget when authorized by the General Assembly, the State Board of Education or county or city boards of education when funds for the same are made available. (1955, c. 1372, art. 9, s. 1; 1957, c. 1220; 1959, c. 573, ss. 5, 6; 1963, c. 1223, s. 3; 1969, c. 1166, s. 2; 1973, c. 796, ss. 1, 2; c. 1209.)

Local Modification. — Jones: 1955, c. 564.

Editor's Note. — The first 1973 amendment inserted "costs of interscholastic, intrascholastic or intramural athletic or physical education programs" in subdivision (6) of subsection (b) and rewrote the introductory paragraph of subsection (c).

The second 1973 amendment added subsection (f).

Purchase of Athletic Equipment with Tax Funds Authorized. — See opinion of Attorney General to Mr. Arthur S. Alford, 42 N.C.A.G. 193 (1973).

Purchase of Accident Insurance by Board of Education. — See opinion of Attorney General to Mr. W.F. Womble, 41 N.C.A.G. 351 (1971).

As to former statute, see Onslow County Bd. of Educ. v. Onslow County Bd. of Comm'rs, 240 N.C. 118, 81 S.E.2d 256 (1954).

Applied in Yoder v. Board of Comm'rs, 7 N.C. App. 712, 173 S.E.2d 529 (1970); Greenville City Bd. of Educ. v. Evans, 21 N.C. App. 493, 204 S.E.2d 899 (1974).

Cited in United States v. Halifax County Bd. of Educ., 314 F. Supp. 65 (E.D.N.C. 1970).

§ 115-79. Objects of expenditure included in State budget. — The appropriation of State funds, as provided by law, shall be used for meeting the cost of the operation of the public schools as determined by the State Board of Education, for the following items or for any other item for which State appropriations are authorized.

(1) General control:
   a. Salary of superintendent.
   b. Travel of superintendent.
   c. Salaries of clerical assistants.
   d. Salaries of property and cost clerks.
   e. Office expenses.
   f. Per diem and travel of county board of education.
   g. Salaries of attendance counselors.

(2) Instructional service:
   a. Salaries of elementary and high school teachers.

b. Salaries of elementary and high school principals.
c. Salaries of supervisors.
d. Instructional supplies.

(3) Operation of plant:
a. Wages of janitors.
b. Fuel.
c. Water, light, and power.
d. Janitor's supplies.
e. Telephones.

(4) Fixed charges, compensation:
a. School employees.
b. Injuries to school pupils.
c. Tort claims.

(5) Auxiliary agencies:
a. Transportation of pupils:
1. Wages of bus drivers.
2. Gas, oil and grease.
3. Gas storage equipment.
4. Salaries of mechanics.
5. Repair parts and batteries.
6. Tires and tubes.
7. License and title fees.
8. Garage equipment.
9. Contract transportation.
10. Major replacements of chassis and bodies.
11. Principals' bus travel.
b. Libraries: Supplies, repairs and replacements.
c. Child health program.
d. Hearing-impaired program.

In making provision from State funds, the State Board of Education shall effect all economies possible in providing for all objects and items of expenditure except items of salary, and after such economies in all nonsalary items, the Board shall have authority to increase or decrease on a uniform percentage basis, the salary schedule of all personnel employed in order that the appropriation of State funds for the public schools may insure their operation for the full length of the term. Nothing in this Chapter shall prevent the use of State moneys for supporting or financing school programs conducted in the summer if approved by the State Board of Education. (1955, c. 1372, art. 9, s. 2; 1963, c. 1223, s. 4; 1969, c. 517, s. 3; c. 1166, s. 3; c. 1213, s. 5.)

As to former statute, see Onslow County Bd. of Educ. v. Onslow County Bd. of Comm'rs, 240 N.C. 118, 81 S.E.2d 256 (1954).

§ 115-80. Rules for preparation of school budgets. — (a) Countywide Current Expense Fund Budget. — County and city boards of education shall file with the appropriate tax-levying authorities on or before the fifteenth day of June, on forms provided by the State Board of Education, all budgets requesting funds to operate the public schools, whether such funds are to be provided by the State or from local sources. There shall be no funds allotted for providing instruction to pupils for a term of more than 180 days either from State or local sources.

The countywide current expense fund shall include all funds for current expenses levied by the board of county commissioners in any county to cover items for current expense purposes, and also all fines, forfeitures, penalties, poll and dog taxes, nontax funds, or any other funds, to be expended in the current

expense budget and funds for vocational subjects, except those funds appropriated for such unit in the State budget.

In the preparation of the several school budgets, it shall be the first duty of county and city boards of education and the board of county commissioners to provide adequate funds for the items of expenditure included under maintenance of plant and the items under fixed charges not provided from State funds in order to protect and preserve the investment of the administrative units in the school plants.

When funds accruing by law to the board of education are not sufficient to repair, maintain and insure properly the school plants of an administrative unit, it shall be the duty of the board of county commissioners in which such unit is located to supplement these funds by a tax levy and said board is so directed and authorized.

In the event that county and city boards of education can by economy in management properly maintain, for use at all times, the school plants for a less amount than is placed to the credit of the school fund by law, it shall be in the discretion of such board of education with the approval of the board of county commissioners to use such excess to supplement any item of expenditure in its current expense fund.

Notwithstanding any other provisions of this Chapter, when necessity is shown by county and city boards of education, or peculiar local conditions demand, for adding or supplementing items of expenditure in the current expense fund, including additional personnel and/or supplements to the salaries of personnel, the board of county commissioners may approve or disapprove, in part or in whole any such proposed and requested expenditure. For those items it approves, the board of county commissioners shall make a sufficient tax levy to provide the funds: Provided, that nothing in this Chapter shall prevent the use of federal or privately donated funds which may be made available for the operation of the public schools under such regulations as the State Board of Education may prescribe.

(b) Supplemental Tax Budget. — In cases where administrative units or districts have voted, or may hereafter vote, a tax in order to operate schools of a higher standard than that provided by State support, county and city boards of education, at the same time the other budgets are filed, shall file a supplemental budget therefor and request that a sufficient levy be made by the tax-levying authorities, not in excess of the rate voted by the people in such unit or district. The tax-levying authorities may approve or disapprove this supplemental budget in whole or in part, and shall levy such taxes as necessary to provide for the approved budget for supplemental purposes, not exceeding the amount of the tax levy authorized by the vote of the people. The expenditure of the proceeds of said levy shall be in accordance with the aforesaid supplemental budget as approved by the tax-levying authorities, except where such levy is voted in a district, in which case the written consent of the chairman of the district committee shall also be obtained before any of said proceeds are expended except in administrative districts: Provided, that the tax-levying authorities may fix a charge against any administrative unit or district for collection of such levies not exceeding one percent (1%) thereof.

(c) Capital Outlay Budget. — In the same manner and at the same time each county and city administrative unit may file with the board of county commissioners a capital outlay budget, subject to the approval of the said board.

(d) Debt Service Budget. — In the same manner and at the same time the county board of education shall file a budget for the school debt service fund of the county, and a budget for the debt service fund of each local district, the indebtedness of which has not been assumed by the county and when the payment of the principal and interest of such indebtedness is required to be provided for by taxes levied by the board of county commissioners. In like

manner and at the same time the board of education of each city administrative unit, when such unit has outstanding indebtedness and the payment of principal and interest of such indebtedness is required to be provided for by taxes levied by a board or body other than the board of county commissioners, shall file a budget for the debt service fund of such unit. The budget for the debt service fund of the county shall include (i) the principal and interest on indebtedness of the county and assumed by the county falling due in the fiscal year for which the budget is prepared, (ii) the installment payable in such fiscal year to a sinking fund for county indebtedness and (iii) a per capita apportionment to each local district based upon (i) and (ii) above, exclusive of installments payable to a sinking fund for the retirement of funding and refunding bonds or notes and the interest on the same, and computed with the last enrollment of the county unit and of such local district certified to the county accountant or county auditor by the State Board of Education: Provided, the inclusion of such per capita apportionment shall not supersede an apportionment provided for in any public-local or private law pursuant to which the bonds of such local district were issued: Provided, further, such per capita apportionment shall not exceed the amount of principal and interest of the indebtedness of the local district falling due in the fiscal year for which the budget is prepared and the installment payable in such fiscal year to a sinking fund for the retirement of bonds of such local district. The budget of each local district shall include the principal and interest on the indebtedness of such local district falling due in the fiscal year for which the budget is prepared and the installment payable in such fiscal year to a sinking fund for the retirement of indebtedness of such local district.

The county accountant shall examine the county debt service budget and the debt service budget of each local district, shall determine their accuracy and make his recommendation to the tax-levying authorities. Accordingly, such tax-levying authorities shall levy the taxes necessary and sufficient to pay all items contained in each such budget.

(e) The board of education of any county or city administrative unit may include funds derived from local sources in its local operating budget for the purpose of establishing and maintaining summer schools. Such summer schools as may be established shall be administered by county and city boards of education and shall be conducted in accordance with standards developed by the State Superintendent of Public Instruction and approved by the State Board of Education. The standards so developed shall specify the requirements for an approved curriculum, the qualifications of the personnel, the length of the session, and the conditions under which students may be granted credit for courses pursued during a summer school. In determining the eligibility of students for admission to summer schools, boards of education shall be governed by the provisions of Article 21 of this Chapter. (1955, c. 1372, art. 9, s. 3; 1961, c. 894, s. 1; 1965, c. 584, s. 10; 1967, c. 1263.)

Constitutionality. — Subsection (a) of this section is a valid exercise of legislative authority. Harris v. Board of Comm'rs, 274 N.C. 343, 163 S.E.2d 387 (1968).

The last paragraph of subsection (a) of this section is authorized by N.C. Const., Art. IX, § 2. Harris v. Board of Comm'rs, 1 N.C. App. 258, 161 S.E.2d 213 (1968).

Delegation of Authority. — Under subsection (a) of this section a county operates under a delegation of authority from the General Assembly to carry out a function imposed upon the General Assembly by N.C. Const., Art. IX, § 2. Harris v. Board of Comm'rs, 1 N.C. App. 258, 161 S.E.2d 213 (1968).

Additional Tax to Supplement Teachers' Salaries.—In levying an additional tax for the purpose of supplementing teachers' salaries pursuant to subsection (a) of this section, the board of county commissioners acts as an agency of the State under a delegation of authority from the General Assembly to carry out the duty imposed upon it by N.C. Const., Art. IX, § 2, to maintain a system of public schools. Harris v. Board of Comm'rs, 1 N.C. App. 258, 161 S.E.2d 213 (1968).

This section in no way prohibits the county commissioners, upon a proper finding of necessity, from levying an additional tax to supplement the current expense fund for the purpose

of supplementing teachers' salaries, if they are otherwise authorized to do so. Harris v. Board of Comm'rs, 1 N.C. App. 258, 161 S.E.2d 213 (1968).

County May Levy Tax to Supplement Teachers' Salaries without Approval of Electorate. — Subsection (a) of this section authorizes a board of county commissioners to levy a tax on property to supplement teachers' salaries without approval of the electorate. Yoder v. Board of Comm'rs, 7 N.C. App. 712, 173 S.E.2d 529 (1970).

Authority as to Capital Outlay Budget and as to Current Expense Budget Is the Same. — The statutory authority of a board of county commissioners applicable to the establishment of and levying a tax for a capital outlay budget under subsection (c) of this section is the same as that applicable to the county-wide current expense fund budget for schools under subsection (a) of this section. Yoder v. Board of Comm'rs, 7 N.C. App. 712, 173 S.E.2d 529 (1970).

Tax for County School Capital Reserve Fund. — Since the county school capital reserve fund is authorized to be contained in the capital outlay budget, the statutory authority of a board of county commissioners applicable to the establishment of and levying a tax for a county school capital reserve fund is thus the same as that applicable to the county-wide current expense fund budget under subsection (a) of this section. Yoder v. Board of Comm'rs, 7 N.C. App. 712, 173 S.E.2d 529 (1970).

Premiums for insurance of public school buildings are a necessary public expense of a county, and the incurring of liability therefor need not be submitted to the voters. Fuller v. Lockhart, 209 N.C. 61, 182 S.E. 733 (1935).

Applied in Whiteville City Administrative Unit v. Columbus County Bd. of County Comm'rs, 251 N.C. 826, 112 S.E.2d 539 (1960); Peacock v. County of Scotland, 262 N.C. 199, 136 S.E.2d 612 (1964).

§§ 115-80.1 to 115-80.5: Repealed by Session Laws 1971, c. 780, s. 7.

Cross Reference. — See the note catchlined "Revision of Chapter" following the analysis to Chapter 159.

§ 115-81. Tax-levying authorities must report action on budgets. — The tax-levying authorities shall report to the administrative units filing budgets for local funds the action on said budgets on or before the tenth day of July of each year. (1955, c. 1372, art. 9, s. 4.)

§ 115-82. Copies of budgets to be filed with State Board of Education. — Copies of all budgets must be filed with the State Board of Education. Copies of all school budgets for the current expense fund, the capital outlay fund and the debt service fund, after approval by local authorities as provided by this Article, shall be filed with the State Board of Education. (1955, c. 1372, art. 9, s. 5.)

§ 115-83. Operating budget. — It shall be the duty of the county and city boards of education, upon the receipt of the tentative allotment of State funds for operating the schools and the approval of all local funds budgets, including supplements to State funds for operating schools of a higher standard, funds for capital outlay and funds for debt service, to prepare an operating budget on forms provided by the State and file same with the State Superintendent of Public Instruction and the State Board of Education on or before the first day of October. Each operating budget shall be checked by the appropriate State school officials to ascertain if it is in accordance with the allotment of State funds and the approval of local funds; and when found to be in accordance with same, such budget shall be the total operating budget for said county or city administrative unit. (1955, c. 1372, art. 9, s. 6.)

§ 115-84. Provision for disbursement of State funds. — The deposit of State funds in the State treasury to the credit of the county and city administrative units shall be made in monthly installments, at such time and in such a manner as may be practicable to meet the needs and necessities of the nine months school term in the various county and city administrative units: Provided, that prior

to the crediting of any monthly installments, it shall be the duty of the county or city board of education to file with the controller of the State Board of Education a certified statement of all expenditures and of all salaries and other obligations that may be due and payable in the succeeding month, said statement to be filed on or before the first day of each month.

When it shall appear to the controller from said certified statement that any amounts are due and necessary to be paid, he shall draw a requisition on the Budget Bureau covering the same; and upon the receipt of notice from the State Treasurer showing the amount placed to their credit, the duly constituted authorities may issue State warrants in the amount so certified: Provided, that no funds shall be released for payment of salaries for administrative officers of county or city units if any reports required to be filed with the State school authorities are more than 30 days overdue. (1955, c. 1372, art. 9, s. 7.)

§ 115-85. Fidelity bonds. — The State Board of Education shall, in its discretion, determine what State and local employees shall be required to give bonds for the protection of State school funds and for the faithful discharge of their duties as to such funds; and, in cases in which bonds are required, the State Board of Education is authorized to place the same and pay the premiums thereon.

Boards of education in each county and city administrative unit shall cause all persons authorized to draw or approve school checks or vouchers drawn on school funds, whether county, district, or special, and all persons who, as employees of such administrative units, are authorized or permitted to receive any school funds from whatever source, and all persons responsible for, or authorized to handle school property, to be bonded annually for the faithful discharge of their duties as to such school funds in such an amount as in the discretion of said county and city boards of education, with the approval of the board of county commissioners, shall be deemed sufficient for the protection of said school funds or property with surety by some surety company authorized to do business in the State of North Carolina. The amount deemed necessary to cover the cost of such surety bond shall be included as an item in the current expense funds of the school budget of each school administrative unit and shall be paid from the funds provided therein; but nothing in this section shall prevent the governing authorities of the respective administrative units from prorating the cost of such bond between the funds protected. (1955, c. 1372, art. 9, s. 8; 1959, c. 573, s. 7; 1971, c. 1095.)

§ 115-86. Apportionment of local funds among administrative units. — All county-wide current expense funds shall be apportioned to the administrative units of a county on a per capita enrollment basis which shall be determined by the State Board of Education and certified to each administrative unit.

County-wide capital outlay funds for the cost of new school sites, or addition to present school sites, new school buildings, new additional construction at existing buildings and equipment for such new buildings and for new additional construction shall be apportioned to the administrative units of a county on the basis of budgets approved by the board of county commissioners for each administrative unit and for the amounts and purposes approved by said board of commissioners. All other capital outlay school funds shall be apportioned to the administrative units of a county on the same per capita enrollment basis used for apportionment of current expense funds.

Upon the basis of a budget approval and upon receiving the certificate of per capita enrollment, the county auditor or accountant shall determine the proportion of all county-wide tax and nontax revenue and other funds accruing to the current expense, and capital outlay funds, which is apportionable to the county and city administrative units within a county. The proportion thereof

allocable to each administrative unit in said county shall be set up to the credit of such administrative unit by the county auditor or accountant.

On the basis of such apportionment, it shall be the duty of the county treasurer, or other county official performing such duties, to remit all of such funds for current expense and capital outlay as they are collected promptly at the end of each month to each administrative unit within the county.

In the event that a greater amount is collected and paid to any administrative unit than is authorized to be spent in its approved budget for current expense, and capital outlay funds, the same shall remain an unencumbered balance to be credited to those funds in the following fiscal year, and shall not be spent, committed, or obligated, unless a supplemental budget is first approved by the board of education and the board of county commissioners.

Collections of all taxes and other revenues accruing to a debt service fund shall be deposited promptly to the credit of such fund in the manner provided by law. Apportionments to local districts contained in the budget for the county debt service fund shall be paid and credited to the debt service funds of the local districts in such manner as may be practicable so as to provide for prompt payment of items of principal and interest therein, as the same fall due.

Funds derived from payments on insurance losses shall be used in the repair or replacement of buildings damaged or destroyed or, in the event the buildings are not replaced, shall be used to reduce the school indebtedness of the county or of the local district to which said payment has been made, or for other capital outlay purposes within said county or local district. (1955, c. 1372, art. 9, s. 9; 1959, c. 915, s. 3; 1961, c. 1199; 1963, c. 448, s. 24.)

Apportionment of County-Wide Taxes. — The principle upon which county-wide taxes were apportioned under the earlier law was fundamentally just and was preserved in the School Machinery Act of 1939. Board of School Trustees v. Benner, 222 N.C. 566, 24 S.E.2d 259 (1943).

§ 115-87. Procedure in cases of disagreement or refusal of tax-levying authorities to levy taxes. — In the event of a disagreement between the county or city boards of education and the tax-levying authorities as to the amount of the current expense fund, the capital outlay fund, and the debt service fund, or any item of either fund, the chairman of the county or city board of education and the presiding officer of the tax-levying authorities shall arrange for a joint meeting of said boards within one week of the disagreement. At such joint meeting, the budget or budgets over which there is disagreement shall be gone over carefully and judiciously item by item. If agreement cannot be reached in this manner, the board of education whose budget is in question and the tax-levying authorities shall each have one vote on the question of the adoption of these amounts in the budget. A majority of the members of each board shall cast the vote for each board.

In the event of a tie, the clerk of the superior court shall act as arbitrator upon the issues arising between such boards and he shall render his decision thereon within five days, but either the board of education or the tax-levying authorities shall have the right to appeal to the superior court within 10 days from the date of the decision of the clerk of the superior court, and it shall be the duty of the judge hearing the case on appeal to find the facts as to the amount of the current expense fund, the capital outlay fund, and the debt service fund, which findings shall be conclusive, and he shall give judgment requiring the tax-levying authorities to levy the tax which will provide the amount of the current expense fund, the capital outlay fund, and the debt service fund, which he finds necessary to maintain the schools in the administrative unit. In case of an appeal to the appellate division which would result in a delay beyond a reasonable limit for levying the taxes for the year, the judge shall order the tax-levying authorities to levy for the ensuing year a rate sufficient to pay the debt service fund, and

to produce, together with what may be received from the nine months' school fund and from other sources, an amount for the current expense fund and the prorated part of capital outlay fund equal to the amount of these funds for the previous year. Also, in case of an appeal, all papers and records relating to the case shall be considered a part of the record for consideration by the court.

The tax-levying authorities shall forthwith levy the taxes according to the judgment rendered and upon refusal to do so, the members of said authority shall be in contempt and may be punished accordingly. (1955, c. 1372, art. 9, s. 10; 1969, c. 44, s. 71.)

Local Modification. — Madison: 1957, c. 627.

History Leading to Enactment of Section. — See Whiteville City Administrative Unit v. Columbus County Bd. of County Comm'rs, 251 N.C. 826, 112 S.E.2d 539 (1960).

Controversy Must Be Resolved prior to Provision of Funds. — When disagreement arises, the county commissioners cannot be required to provide funds beyond their estimate of needs until the controversy has been resolved in the manner provided by statute. Whiteville City Administrative Unit v. Columbus County Bd. of County Comm'rs, 251 N.C. 826, 112 S.E.2d 539 (1960).

Decisions under Former Statutes. — As to constitutionality of former provisions, see Board of Educ. v. Board of Comm'rs, 174 N.C. 469, 93 S.E. 1001 (1917); Board of Educ. v. Board of Comm'rs, 182 N.C. 571, 109 S.E. 630 (1921); In re Board of Educ., 187 N.C. 710, 122 S.E. 766 (1924). As to necessity for meeting or arbitration by clerk, see Rollins v. Rogers, 204 N.C. 308, 168 S.E. 206 (1933).

Applied in Onslow County Bd. of Educ. v. Onslow County Bd. of Comm'rs, 240 N.C. 118, 81 S.E.2d 256 (1954).

§ 115-88. Jury trial as to amount needed to maintain schools. — The tax-levying authorities or boards of education shall have the right to have the issues tried by a jury, as to the amount of the current expense fund and the capital outlay fund, which jury trial shall be set at the first succeeding session of the superior court, and shall have precedence over all other business of the court. Provided, that if the judge holding the court shall certify to the Chief Justice of the Supreme Court, either before or during such session, that on account of the accumulation of other business, the public interest will be best served by not trying such action at said session, the Chief Justice shall immediately call a special session of the superior court for said county, to convene as early as possible, and assign a judge of the superior court or an emergency judge to hold the same, and the said action shall be tried at such session. There shall be submitted to the jury for its determination the issue as to what amount is needed to maintain the schools, and they shall take into consideration the amount needed and the amount available from all sources as provided by law. The final judgment rendered in such action shall be conclusive, and the tax-levying authorities shall forthwith levy taxes in accordance with such judgment; otherwise those who refuse so to do shall be in contempt, and may be punishable accordingly: Provided, that in case of a mistrial or an appeal to the appellate division which would result in a delay beyond a reasonable limit for levying the taxes for the year, the judge shall order the tax-levying authorities to levy for the ensuing year a rate sufficient to pay the debt service fund, and to produce, together with what may be received from the State public school fund and from other sources, an amount for the current expense fund equal to the amount of this fund for the previous year. (1955, c. 1372, art. 9, s. 11; 1969, c. 44, s. 72.)

History Leading to Enactment of Section. — See Whiteville City Administrative Unit v. Columbus County Bd. of Comm'rs, 251 N.C. 826, 112 S.E.2d 539 (1960).

Applied in Onslow County Bd. of Educ. v. Onslow County Bd. of Comm'rs, 240 N.C. 118, 81 S.E.2d 256 (1954).

§ 115-89. Operation of county and city school budget. — (a) Duty of County and City Boards of Education. — It shall be the duty of the county and city boards of education to pay all obligations incurred in the operation of the public schools promptly and when due, and to this end said boards of education shall inform the tax-levying authorities from month to month of any anticipated expenditures which will exceed the current collection of taxes and such balance as may be on hand, if any, for the payment of said obligations in order that the tax-levying authorities may make provisions for the funds to be available: Provided, that if a county or city board of education shall willfully create a debt that shall in any way cause the expense of the year to exceed the amount authorized in the budget, without the approval of the tax-levying authorities, the indebtedness shall not be a valid obligation of the administrative unit and the members of the board responsible for making the debt may be held liable for the same.

(b) Duty of Tax-Levying Authorities. — It shall be the duty of the tax-levying authorities to provide, when and as needed, the funds to meet the monthly expenditures, including salaries and other necessary operating expenses, as set forth in a statement prepared by the county or city boards of education and which expenditures are in accordance with the approved budget. If the collection of taxes does not yield sufficient revenue for this purpose, it shall be the duty of the tax-levying authorities to borrow against the amount approved in the budget and to issue short term notes for the amount so borrowed in accordance with the provisions of "The County Finance Act" and "The Local Government Act." The interest on all such notes shall be provided by the tax-levying authorities in addition to the amount approved in the budget, unless this item is specifically taken care of in the budget. (1955, c. 1372, art. 9, s. 12.)

§ 115-90. How school funds are paid out. — The school funds shall be paid out as follows:

(1) State School Funds. — All State school funds shall be released only on warrants drawn on the State Treasurer, signed by the chairman and the secretary of the county board of education for county administrative units, and by the chairman and the secretary of the city board of education for city administrative units.

(2) County, City, and District School Funds. — All county, city, and district school funds, from whatever source provided, shall be paid out only on warrants signed by the chairman and the secretary of the county board of education for county units and the chairman and the secretary of the city board of education for city administrative units. In county administrative units such warrants shall be countersigned by such officer as the county government laws may require, or by some other officer or employee of the county, or of the county board of education, designated from time to time by the board of county commissioners with the approval of the county board of education, and in city administrative units such warrants shall be countersigned by the treasurer of the administrative unit: Provided, the countersigning officer shall countersign warrants drawn as herein specified when such warrants are within the funds set up to the credit of, and are within the budget amounts appropriated for, the particular administrative unit, and further, when each warrant is accompanied by an invoice, statement, voucher or other basic document which, upon examination by the countersigning officer, satisfies such countersigning officer that issuance of such warrant is proper: Provided, further, that in county units before the chairman and secretary of the board of education shall draw a voucher on funds belonging to a local tax district, they shall have an order signed by the chairman of the committee of such district authorizing the expenditure of such funds, except in the case of

administrative districts. All vouchers which are chargeable against district funds shall specify the district against which they are charged.

(3) When Signatures of Chairman and Secretary May Be Affixed by Machine. — The signature of the chairman and the secretary of county and city boards of education required by this section on school warrants may be affixed to such warrants by signature machines. When such machines are used on warrants drawn on the State Treasurer, the same may be used only in accordance with such rules and regulations as may be prescribed by the State Board of Education with the approval of the State Treasurer. The use of such signature machines shall not be employed in any county or city administrative unit until the governing board thereof has adopted a resolution authorizing the use of same and accepting the full responsibility for any nonauthorized or improper use of such machines. In all cases where such signature machines are used, the secretary to the county board of education and the surety on his bond, or the secretary to the city board of education and the surety on his bond, shall be liable for any illegal, improper, or unauthorized use of such machines.

(4) Special Funds of Individual Schools. — County and city boards of education shall, unless otherwise provided for by law, designate the bank, depository, or trust company authorized to do business in North Carolina, in which all special funds of each individual school shall be deposited. Such funds shall be paid out only on checks signed by the principal of the school and the treasurer who has been selected by the respective boards of education: Provided, that the schools handling less than three hundred dollars ($300.00) in any school year may not be required, in the discretion of the boards of the respective units, to follow this procedure for depositing and disbursing funds.

In all schools a complete record shall be kept by the treasurer and reports made of all the money received and disbursed by him in handling funds of the school: Provided, that nothing in this section shall prevent the depositing of all these special funds with the treasurer of the county or city administrative units and the disbursing of said funds upon the signatures of the chairman and secretary of the respective boards of education.

(5) Records and Reports. — The State Superintendent of Public Instruction and the State Board of Education shall have full power and authority to make rules and regulations prescribing the manner in which records shall be kept by all county and city administrative units as to the expenditure of the current expense funds, the capital outlay funds and the debt service funds derived from local sources, and for making reports thereof to the State Superintendent of Public Instruction. (1955, c. 1372, art. 9, s. 13; 1959, c. 573, s. 8; 1965, c. 488, s. 1; c. 584, s. 11.)

Local Modification. — Duplin County: 1965, c. 961, s. 1; Moore: 1959, c. 977, s. 2; Rowan, as to subdivision (2): 1955, c. 419.

ARTICLE 10.

The Treasurer; His Powers, Duties and Responsibilities in Disbursing School Funds.

§ 115-91. Treasurer of school funds. — (a) County School Administrative Unit. — The county treasurer of each county shall be the treasurer of all county school funds and school district funds of the county school administrative unit.

He shall receive and disburse all such school funds and shall keep such funds separate and distinct from all other funds.

Before entering upon the duties of his office, the county treasurer shall furnish bond in some surety company authorized to do business in North Carolina in an amount to be fixed by the board of county commissioners, which bond shall be a separate bond, not including liability for other funds, and shall be conditioned for the faithful performance of his duties as treasurer of the county school funds and district school funds of the county administrative unit, and for the payment to his successor in office of any unexpended balance of school moneys which may be in his hands. The board of county commissioners may from time to time, if necessary, require the county treasurer to increase the amount of his bond or furnish additional security.

In all counties in which the office of county treasurer has been abolished as authorized by G.S. 155-3, or when by any other law a bank or trust company has been substituted therefor such bank or trust company shall act as treasurer and depository of all county school funds and district school funds: Provided, however, that such bank or trust company acting as treasurer of county school funds and district school funds shall not be required to maintain the system of bookkeeping and accounting imposed upon the county treasurer by G.S. 155-7, but the duty and responsibility of keeping and maintaining the accounting system as to county and district schools shall be the duty and responsibility of the county accountant or county auditor serving as such under the provisions of G.S. 153-115; provided, further, that nothing contained in this section shall relieve the superintendent of any county administrative unit from maintaining such accounting system and furnishing such reports as are now or may hereinafter be imposed upon him by law.

(b) City School Administrative Unit. — Unless otherwise provided by law, the board of education of a city administrative unit shall appoint a treasurer of all the school funds of such unit. The treasurer so appointed shall continue to fill such position at the will of the board of education of such unit. No person authorized to make the expenditures or draw vouchers therefor, or to approve the same, shall act as treasurer of such funds.

Before entering upon the duties of his office, the treasurer of a city administrative unit shall file with the board of education a good and sufficient bond with surety by some surety company authorized to do business in North Carolina in an amount to be fixed by the board of education of such administrative unit, which shall be a separate bond, not including liability for any other funds, and shall be conditioned for the faithful performance of the duties of treasurer of the city administrative unit school funds and for the proper accounting for all such funds as may come into his possession by virtue of his office as treasurer and for payment to his successor in office of any unexpended balance of school moneys which may be in his hands. The board of education may from time to time, if necessary, require him to increase the amount of his bond, or furnish additional security.

The treasurer of city administrative unit school funds is hereby required to maintain and keep, with respect to said funds, like records and accounts and make such reports with respect to said funds as herein provided to be made, kept, and maintained by the treasurer of county and district school funds of county administrative units.

(c) Special Funds of Individual Schools. — The county board of education of all county administrative units and the board of education of all city administrative units shall, by proper resolution duly recorded, appoint a treasurer of all special school funds for each school in the respective administrative unit. In all individual schools, a complete record shall be kept by the treasurer so appointed and reports made of all money received and from what source and of all money disbursed and for what purpose: Provided,

however, that nothing in this subsection (c) shall prevent the handling of these special school funds under subsection (a) or subsection (b) of this section. The treasurer of all special funds and the principal of each school shall make a monthly report and such other reports as may be required to the superintendent of the administrative unit wherein such individual school is located, showing the status of each special school fund, upon forms to be supplied for that purpose. (1955, c. 1372, art. 10, s. 1; 1957, c. 365.)

Local Modification. — Guilford: 1955, c. 671; 1973, c. 336.

Editor's Note. — Sections 155-3 and 155-7, referred to in the third paragraph of subsection (a), were repealed by Session Laws 1971, c. 780, s. 34. Section 153-115, also referred to in that paragraph, was repealed by Session Laws 1973, c. 822. For present provisions as to local government finance, see Chapter 159. For present provisions as to counties, see Chapter 153A.

Legislature May Change Custodian of Fund. — Ordinarily the county treasurer is the proper custodian of all sinking fund securities, including school sinking funds and securities held for the retirement of term bonds where the county has assumed the payment of such bonds, but the General Assembly may designate or change the custodian of sinking fund securities. Johnson v. Marrow, 228 N.C. 58, 44 S.E.2d 468 (1947).

§ 115-92. Action against treasurer to recover funds. — If it shall appear that any part of the public school funds received by the county treasurer, or person or depository acting as treasurer, or the treasurer of a city administrative unit, has not been properly applied to the credit of the county or city board of education, as the case may be, such board or boards of education shall bring action on the bond of such official or depository to recover such part of the funds as has not been so applied to such board or boards of education. In the event such board does not bring appropriate action against the treasurer, or person or depository acting as treasurer, the tax-levying authorities shall bring action in the name of the State for any breach of the bond of the treasurer of any school funds for any failure to account properly for the funds received by him. If the tax-levying authorities shall fail to bring such action, it may be brought in the name of the State upon the relation of any taxpayer. (1955, c. 1372, art. 10, s. 2.)

§ 115-93. Annual reports of treasurer. — The treasurer of every county and city board of education shall report to the State Superintendent of Public Instruction on the first Monday of August of each year the entire amount of money received and disbursed by him during the preceding fiscal year. Such reports shall be made on blanks furnished by the State Superintendent and all information called for on such blanks shall be furnished in detail and by item as may be requested on said report.

On the same date that the treasurer reports to the State Superintendent, he shall file a duplicate of such report in the office of the county or city board of education, as the case may be. Likewise, the treasurer of every county or city school fund shall make such other reports as the board of education may from time to time require.

The treasurer of every school fund shall, when required by the county or city board of education, produce his books and vouchers for examination and shall also exhibit all moneys due the public school fund. (1955, c. 1372, art. 10, s. 3.)

Discretionary Power Not Given to Superintendent. — The Supreme Court does not construe this section as giving to the State Superintendent of Public Instruction any discretionary power in connection with ascertaining the average current expenditures per student from local funds throughout the State. It is a matter of tabulating and certifying to the local units the facts as found from the reports submitted to him by the local units. Peacock v. County of Scotland, 262 N.C. 199, 136 S.E.2d 612 (1964).

§ 115-94. Duties of treasurer on expiration of his term. — Each treasurer of public school funds, in going out of office, shall deposit in the office of the board of education of the administrative unit of which he is treasurer his books in which are kept his school accounts and all records and blanks pertaining to his office. He shall at the time he goes out of office, file with the board of education and with his successor, a report, itemized as required by law, covering the receipts and disbursements for that part of the fiscal school year from the thirtieth of June preceding to the time at which he turns over his office to his successor, and his successor shall include in his report to the State Superintendent of Public Instruction and to the superintendent of the administrative unit the receipts and disbursements for the current fiscal year as a whole. (1955, c. 1372, art. 10, s. 4.)

§ 115-95. Penalty for failure to report and to perform other duties. — If any treasurer of the county or city administrative unit school fund shall fail to make reports required of him at the time and in the manner prescribed, or fail to perform any other duties required of him by law, he shall be guilty of a misdemeanor and be fined or imprisoned in the discretion of the court. (1955, c. 1372, art. 10, s. 5.)

§ 115-96. Speculating in teachers' salary vouchers. — If any clerk, sheriff, register of deeds, county treasurer or other county, city, town or State officer shall engage in the purchasing of the salary voucher of any of the school personnel at a less price than its full and true value or at any rate of discount thereon, or be interested in any speculation thereon, he shall be guilty of a misdemeanor and upon conviction shall be fined or imprisoned and shall be liable to removal from office at the discretion of the court. (1955, c. 1372, art. 10, s. 6.)

§ 115-97. Audit of school funds. — (a) Generally. — All school funds shall be audited and reports made for each fiscal year.

(b) State School Funds. — The State Board of Education, in cooperation with the State Auditor, shall cause to be made an annual audit of the State school funds disbursed by county and city administrative units and such additional audits as may be deemed necessary.

(c) County and City Administrative Units and District School Funds. — County and city boards of education shall cause to be made an annual audit of all county, city, and district school funds including the records and accounts of the boards of education and those of their respective treasurers, and the school boards shall provide for the payment of the cost thereof in the school budgets of the respective administrative units.

The auditor's report shall show:

(1) Sources of revenue and purposes for which expenditures were made;
(2) Comparison of approved school budget with the actual transactions;
(3) Statement of outstanding indebtedness, including county school bonds, amounts due the county or city board of education, and all unpaid accounts;
(4) Appraisal of all school property; and
(5) Such other items as may be prescribed by the county or city boards of education and the Local Government Commission and which will aid in making a complete audit.

The annual audits shall be completed as near to the close of the year as practicable and copies of said audit shall be filed with the chairman of the board of education, the superintendent of schools, the county auditor, the State Board of Education, the director of the Local Government Commission and the State Superintendent of Public Instruction not later than October 1 after the close of the fiscal year on June 30. By October 1 after the close of the fiscal year, a summary statement of the report on the audit shall be published in some

newspaper published in the county, or posted at the courthouse door if no newspaper is published in such county.

(d) Special Funds of Individual Schools. — County and city boards of education shall cause to be made, at the same time the audit of the county or city funds is made, an audit of the special school funds of each school in the respective administrative units. Such annual audits shall be completed as near the close of the year as practicable and copies of each audit shall be filed with the chairman of the board of education and the superintendent of schools of the administrative unit in which the school is located and the State Board of Education not later than October 1 after the close of the fiscal year on June 30.

(e) Payment of Audit Cost. — County and city boards of education shall include in the school budgets of the respective administrative units funds for the payment of the costs of the audits of county, city, district, and special funds of individual schools as required under subsections (c) and (d) of this section: Provided, that nothing in this section shall prevent the respective boards from prorating the cost of auditing of special funds to the special funds of each school. (1955, c. 1372, art. 10, s. 7.)

§ 115-98. Fines, forfeitures and penalties. — It shall be the duty of every public officer, including clerks of the several courts and all magistrates, as well as all others in any way related or connected with the assessing, collecting and handling of any of those funds mentioned in the Constitution, Article IX, Sec. 7, which shall belong to and remain in the several counties and which shall be faithfully appropriated for establishing and maintaining the free public schools:

(1) To keep in a proper record book supplied by the county an itemized, detailed statement of the respective amounts received by him in the way of fines, penalties, amercements and forfeitures.

(2) To account for and pay to the county treasurer all of said funds received by him within 30 days after the receipt thereof, to the end that all of said funds may be faithfully appropriated by the county board of education for the purposes mentioned in the Constitution.

(3) To enter immediately upon the docket or record book all of said funds which are assessed, and which shall not be remitted except for good and sufficient reasons, which reasons shall be stated on the docket and at all times be open to public inspection.

(4) Any officer, including magistrates, violating any of the provisions of this section shall be guilty of a misdemeanor and upon conviction shall be punished by fine or imprisonment at the discretion of the court. (1955, c. 1372, art. 10, s. 8; 1971, c. 704, ss. 8, 9.)

Local Modification. — Brunswick, as to former statute: 1955, c. 336.

§ 115-99: Repealed by Session Laws 1969, c. 1190, s. 53.

§ 115-100. Miscellaneous funds. — It shall be the duty of the county superintendent of schools at least once a year and as directed by the county board of education to examine the records of the county to see that the proceeds from the poll taxes and the dog taxes where applicable are correctly accounted for to the school fund each year; he shall likewise examine the records of the several courts of the county, including magistrates, and their reports filed with the clerk of the superior court, to see that all fines, forfeitures, and penalties, and any other special funds accruing to the county school fund are correctly and promptly accounted for to the school fund; and if the superintendent shall find that any such taxes or fines are not correctly and promptly accounted for to the

school fund, it shall be the duty of the superintendent to make a prompt report thereof to the solicitor of the superior court in the district.

It shall be unlawful for any of the proceeds of fines, forfeitures, penalties and other funds accruing to the public school fund to be used for other than school purposes, and the official responsible for any diversion of such funds to other purposes shall be guilty of a misdemeanor and, upon conviction, shall be punishable by fine or imprisonment, in the discretion of the court. The clear proceeds of such funds shall be accounted for by the officers collecting the same, and no deductions shall be made therefrom for fees or commissions. Any court officer, including magistrates, who shall willfully fail or refuse to account for all such funds coming into the hands of such officer, shall upon conviction thereof, be guilty of a felony and punished as provided by law in cases of embezzlement. (1955, c. 1372, art. 10, s. 10; 1971, c. 704, s. 10.)

ARTICLE 11.

Loans from State Literary Fund.

§ 115-101. Loans by State Board from State Literary Fund. — The State Literary Fund includes all funds derived from the sources enumerated in Sec. 6, Article IX, of the Constitution, and all funds that may be hereafter so derived, together with any interest that may accrue thereon. This Fund shall be separate and distinct from other funds of the State.

The State Board of Education, under such rules and regulations as it may deem advisable, not inconsistent with the provisions of this Article, may make loans from the State Literary Fund to the counties for the use of county and city boards of education under such rules and regulations as it may adopt and according to law for the purpose of aiding in the erection and equipment of school plants, maintenance buildings and transportation garages. No warrant for the expenditure of money for such purposes shall be issued except upon the order of the State Superintendent of Public Instruction with the approval of the State Board of Education. (1955, c. 1372, art. 11, s. 1; 1971, c. 704, s. 11; c. 1096.)

Cross Reference. — As to authority to sell notes evidencing loans from State Literary Fund, see § 135-7.1.

Editor's Note. — For act validating notes evidencing loans from Literary Fund, see Session Laws 1945, c. 404.

§ 115-102. Terms of loans. — Loans made under the provisions of this Article shall be payable in 10 installments, shall bear interest at a uniform rate determined by the State Board of Education not to exceed six per centum (6%), payable annually, and shall be evidenced by the note of the county, executed by the chairman, the clerk of the board of county commissioners, and the chairman and secretary of the county or city board of education, and deposited with the State Treasurer. The first installment of such loan, together with the interest on the whole amount then due, shall be paid by the county or city board on the tenth day of February after the tenth day of August subsequent to the making of such loan, and the remaining installments, together with the interest, shall be paid on the tenth day of February of each subsequent year until all shall have been paid. (1955, c. 1372, art. 11, s. 2; 1971, c. 1094.)

§ 115-103. How secured and paid. — At the January meeting of the board of education, before any installment shall be due on the next tenth day of February, the county or city board of education shall set apart out of the school funds an amount sufficient to pay such installment and interest to be due, and shall issue its order upon the treasurer of the county or city school fund therefor, who, prior to the tenth day of February, shall pay over to the State Treasurer

the amount then due. Upon failure of any administrative unit to pay any installment of principal or interest, or any part of either, when due, the State Treasurer, upon demand of the State Board of Education, shall bring action against the county or city board of education and board of county commissioners to compel the levy and collection of sufficient taxes to pay said installment of principal and accrued interest. The State Board of Education may accept payment of any or all of said notes and the interest accrued thereon before maturity. (1955, c. 1372, art. 11, s. 3.)

§ 115-104. Loas by county board to school districts. — The county board of education, from any sum borrowed under the provisions of this Article, may make loans only to districts that shall have levied a local tax sufficient to repay the installments and interest on said loan for the purpose of building schoolhouses in the district, and the amount so loaned to any district shall be payable in 10 annual installments, with interest thereon at the same rate the county board of education is paying, payable annually. Any amount loaned under the provisions of this law shall be a lien upon the total local tax funds produced in the district. Whenever the local taxes may not be sufficient to pay the installments and the interest, the county board of education must supply the remainder out of the current expense fund, and shall make provision for the same when the county budget is made and presented to the commissioners.

All loans hereafter made to such districts shall be made upon the written petition of a majority of the committee of the district asking for the loan and authorizing the county board to deduct a sufficient amount from the local taxes to meet the indebtedness to the county board of education. Otherwise, the county board of education shall have no lien upon the local taxes for the repayment of this loan: Provided, this lien shall not lie against taxes collected or hereafter levied to pay interest and principal on bonds issued by or on behalf of the district. (1955, c. 1372, art. 11, s. 4.)

§ 115-105. State Board of Education authorized to accept funding or refunding bonds of counties for loans; approval by Local Government Commission. — In any case where a loan has heretofore been made from the State Literary Fund or from any special building fund of the State to a county and such county has heretofore or shall hereafter authorize the issuance of bonds for the purpose of funding or refunding interest on or the principal of all or a part of the notes evidencing such loan, the State Board of Education is hereby authorized to accept funding or refunding bonds or notes of such county in payment of interest on or the principal of the notes evidencing such loan: Provided, however, that the issuance of such funding or refunding bonds shall have been approved by the Local Government Commission. (1955, c. 1372, art. 11, s. 5.)

§ 115-106. Issuance of bonds as part of general refunding plan. — In any case where the funding or refunding of interest on or the principal of such notes shall constitute a part of a refunding plan or program of the county, and the terms of such funding or refunding shall be accepted by a sufficient number of the holders of the county's obligation to put same into effect, the State Board of Education may authorize the acceptance of such funding or refunding bonds or notes upon the same terms and conditions, both as to principal and interest, as have been agreed upon by a sufficient number of the other holders of the county's obligations to put same into effect. (1955, c. 1372, art. 11, s. 6.)

§ 115-107. Validating certain funding and refunding notes of counties. — The notes of any county held by the State Board of Education which were heretofore issued in exchange for and for the purpose of refunding and retiring notes evidencing loans made from the State Literary Fund pursuant to Article 24 of Chapter 136 of the Public Laws of 1923, or from special building funds

pursuant to either Chapter 147 of the Public Laws of 1921, or Article 25 of Chapter 136 of the Public Laws of 1923, or Chapter 201 of the Public Laws of 1925, or Chapter 199 of the Public Laws of 1927, are hereby declared to be valid existing indebtedness of said county incurred by said county for the maintenance of the school term as required by the Constitution of North Carolina, notwithstanding any lack of authority for the issuance of said notes or error or omission or irregularity in the acts done or proceedings taken to provide for their issuance, and said notes held by the State Board of Education are hereby authorized to be refunded with bonds issued pursuant to the County Finance Act, being Chapter 81 of the Public Laws of 1927, as amended. (1955, c. 1372, art. 11, s. 7; 1971, c. 704, s. 12.)

§ 115-108. Special appropriation from fund. — The State Board of Education may annually set aside and use out of the funds accruing in interest to the State Literary Fund, a sum not exceeding seventeen thousand five hundred dollars ($17,500) to be used for giving directions in the preparation of proper plans for the erection of school buildings in providing inspection of such buildings as may be erected in whole, or in part, with money borrowed from said fund, and such other purposes as said Board may determine to secure the erection of a better type of school building and better administration of said fund. (1955, c. 1372, art. 11, s. 8.)

§ 115-108.1. Loans not granted in accordance with § 115-101. — The State Board of Education, under such rules and regulations as it may adopt, may make loans from the State Literary Fund to any county or city board of education, when the State Board of Education finds as a fact that it is not practicable for a loan to be granted in accordance with the provisions of G.S. 115-101, for the purpose of aiding in the erection and equipment of public school plants. Such a loan shall not constitute a credit obligation of the county. No warrant for the expenditure of money for a loan authorized under the provisions of this section shall be issued except upon the approval of the State Board of Education, and after a finding of fact by said Board that it is not practicable for a loan to be granted in accordance with the provisions of G.S. 115-101 and that a dire emergency exists in the administrative unit applying for such loan. Loans made under the provisions of this section shall be made in accordance with the terms specified in G.S. 115-102 and shall be evidenced by the note of the county or city board of education, executed by the chairman and the secretary of said board. The first installment of such loan, together with the interest then due, shall be paid by the county or city board of education on or before the tenth day of June in the fiscal year following the fiscal year in which the loan was made, and succeeding installments, together with accrued interest, shall be paid one each on or before the tenth day of June of each successive fiscal year until all amounts due on said loan shall have been paid. The provisions of G.S. 115-103 shall not apply to loans made pursuant to the provisions of this section. (1959, c. 227; c. 764, s. 2.)

§ 115-108.2. Pledge of nontax revenues to repayment of loans from State Literary Fund. — Any county or city board of education obtaining a loan from the State Literary Fund under the provisions of G.S. 115-108.1 may, with the approval of the board of county commissioners, pledge to the repayment of such loan any available nontax revenues, including but not limited to, fines, penalties, and forfeitures. (1959, c. 764, s. 1.)

ARTICLE 12.

Assumption of School District Indebtedness by Counties.

§ 115-109. Method of assumption; validation of proceedings. — The county board of education, with the approval of the board of commissioners, and when the assumption of such indebtedness is approved at an election as hereinafter provided, if such election is required by the Constitution, may include in the debt service fund in the school budget all outstanding indebtedness for school purposes of every city, town, school district, school taxing district, township, city administrative unit or other political subdivision in the county (hereinafter collectively called "local districts"), lawfully incurred in erecting and equipping school buildings necessary for the school term. The election on the question of assuming such indebtedness shall be called and held in accordance with the provisions of Article 9 of Chapter 153 of the General Statutes, known as "The County Finance Act," insofar as the same may be made applicable, and the returns of such election shall be canvassed and a statement of the result thereof prepared, filed and published as provided in the County Finance Act. No right of action or defense founded upon the invalidity of the election shall be asserted, nor shall the validity of the election be open to question in any court upon any ground whatever, except in an action or proceeding commenced within 30 days after the publication of such statement of result. When such indebtedness is taken over for payment by the county as a whole and the local districts are relieved of their annual payments, the county funds provided for such purpose shall be deducted from the debt service fund prior to the division of such fund among the schools of the county as provided in subsection (d) of G.S. 115-80.

The assumption, as herein provided, by any county, at any time prior to the twenty-eighth day of February, 1951, of the indebtedness of local districts for school purposes and all proceedings had in connection therewith are hereby in all respects ratified, approved, confirmed, and validated: Provided, that nothing herein shall prevent counties and local taxing districts from levying taxes to provide for the payment of their debt service requirements if they have not been otherwise provided for. (1955, c. 1372, art. 12, s. 1.)

Editor's Note. — Article 9 of Chapter 153, referred to in the first paragraph, was repealed by Session Laws 1973, c. 822.

Section Considered in Pari Materia with Special School Bond Act. — Where this section and a special school bond act (Session Laws 1957, c. 1078), deal with the same general subject, to wit: Assumption by counties of school district indebtedness, these statutory provisions must be regarded as in pari materia. It is presumed (1) that the earlier general act was known to the legislature when it enacted the later special act, and (2) that the later statute was enacted in the light of and in reference to the former general statute on the same subject. Strickland v. Franklin County, 248 N.C. 668, 104 S.E.2d 852 (1958).

§ 115-110. Taxes levied and collected for bonds assumed to be paid into school debt service fund of county; discharge of sinking fund custodian. — In any county where the bonds of a local district have been assumed under the provisions of this Article, all taxes levied and collected for the purpose of paying the principal of and interest on said bonds, or for creating a sinking fund for the retirement of said bonds, shall be deposited in the school debt service fund of the county. The custodian of all moneys and other assets of a sinking fund created for the retirement of said bonds is hereby authorized to turn over such moneys and assets to the county treasurer, the county sinking fund commissioner or other county officer charged with the custodianship of sinking funds, and such custodian shall thereby be discharged from further responsibility for administration of and accounting for such sinking fund. (1955, c. 1372, art. 12, s. 2.)

§ 115-111. Allocation to district bonds of taxes collected. — The collections of taxes levied for debt service on all taxable property of a county in which local district bonds have been assumed shall be proportionately allocated to each issue of such bonds. (1955, c. 1372, art. 12, s. 3.)

ARTICLE 13.

Refunding and Funding Bonds of School Districts.

§ 115-112. "School district" defined. — The term "school district" as used in this Article shall be deemed to include any special school taxing district, local tax district, special charter district, city administrative unit or other political subdivision of a county by which or on behalf of which bonds have been issued for erecting and equipping school buildings, or for refunding the same, and such bonds are outstanding. (1955, c. 1372, art. 13, s. 1.)

§ 115-113. Continuance of district until bonds are paid. — Notwithstanding the provisions of any law which affect the continued existence of a school district or the levy of taxes therein for the payment of its bonds, such school district shall continue in existence with its boundaries unchanged from those established at the time of issuance of its bonds, unless such boundaries shall have been extended and thereby embrace additional territory subject to the levy of such taxes, until all of its outstanding bonds, together with the interest thereon, shall be paid. (1955, c. 1372, art. 13, s. 2.)

§ 115-114. Funding and refunding of bonds authorized; issuance and sale or exchange; tax levy for repayment. — The board of commissioners of the county in which any such school district is located is hereby authorized to issue bonds at one time or from time to time for the purpose of refunding or funding the principal or interest of any bonds of such school district then outstanding. Such refunding or funding bonds shall be issued in the name of the school district and they may be sold or delivered in exchange for or upon the extinguishment of the obligations or indebtedness refunded or funded. Except as otherwise provided in this Article, such refunding and funding bonds shall be issued in accordance with the provisions of G.S. 159-59 to 159-62 of the General Statutes and the Local Government Act, G.S. 159-1 et seq. and acts amendatory thereof and supplemental thereto. The tax-levying body or bodies authorized by law to levy taxes for the payment of the bonds, the principal or interest of which shall be refunded or funded, shall levy annually a special tax on all taxable property in such school district sufficient to pay the principal and interest of said refunding or funding bonds as the same become due. (1955, c. 1372, art. 13, s. 3.)

§ 115-115. Issuance of bonds by cities and towns; debt statement; tax levy for repayment. — In case the governing body of any city or town is the body authorized by law to levy taxes for the payment of the bonds of such district, whether the territory embraced in such district lies wholly or partly within the corporate limits of such city or town, such governing body of such city or town is hereby authorized to issue bonds at the time or from time to time for the purpose of refunding or funding the principal or interest of any bonds then outstanding which were issued by or on behalf of such school district. Except as otherwise provided in this Article, such refunding and funding bonds shall be issued in accordance with the provisions of the Municipal Finance Act, as amended, relating to the issuance of refunding and funding bonds under that act, and the provisions of the Local Government Act and acts amendatory thereof and supplemental thereto, except in the following respects:

(1) The bonds shall be issued in the name and on behalf of the school district by the governing body of such city or town.
(2) It shall not be necessary to include in the ordinance authorizing the bonds, or in the notice required to be published after the passage of the ordinance, any statement concerning the filing of a debt statement, and, as applied to said bonds, G.S. 160-379 and 160-383 (the Municipal Finance Act), as amended, shall be read and understood as if they contained no requirements in respect to such matters.
(3) The governing body of such city or town shall annually levy and collect a tax ad valorem upon all the taxable property in such school district sufficient to pay the principal and interest of such refunding or funding bonds as the same become due. (1955, c. 1372, art. 13, s. 4.)

Editor's Note. — Sections 160-379 and 160-383, referred to in subdivision (2), were repealed by Session Laws 1971, c. 780, s. 12.

SUBCHAPTER V. SPECIAL LOCAL TAX ELECTIONS FOR SCHOOL PURPOSES.

ARTICLE 14.

School Areas Authorized to Vote Local Taxes.

§ 115-116. Purposes for which elections may be called. — (a) To Vote a Supplemental Tax. — Elections may be called to ascertain the will of the voters as to whether there shall be levied and collected a special tax in the several administrative units, districts, and other school areas, including districts formed from contiguous counties, to supplement the current expense funds from State and county allotments and hereby operate schools of a higher standard by supplementing any item of expenditure in the school budget. When supplementary funds are authorized by the carrying of such an election, such funds may be used to employ additional teachers, other than those allotted by the State, to teach any grades or subjects or for kindergarten instruction, to establish and maintain approved summer schools, and for making the contribution to the Teachers' and State Employees' Retirement System of North Carolina for such teachers, or for any object of expenditure: Provided, that elections may be called to ascertain the will of the voters of an entire county, as to whether there shall be levied and collected a special tax on all the taxable property within the county for the purposes enumerated in this subsection. In such event, the supplemental tax shall be apportioned among the administrative units of the county on a per capita enrollment basis which shall be determined by the State Board of Education and certified to each administrative unit involved.

(b) To Increase a Supplemental Tax Rate. — Elections may be called in any school area which has previously voted a supplemental tax of less than the maximum for the purpose of increasing the rate of tax previously voted but not to exceed the maximum.

(c) To Enlarge City Administrative Units. — Elections may be called in any district or districts, or other school area or areas, of a county administrative unit to ascertain the will of the voters in such district or districts or other school area or areas, as to whether an adjoining city administrative unit shall be enlarged by consolidating such district or districts, or other school area or areas, with such city administrative unit, and whether after such enlargement of the city administrative unit there shall be levied in such other district or districts, or other school area or areas, so consolidated with the city administrative unit the

same school taxes as shall be levied in the other portion of the city administrative unit.

(d) To Supplement and Equalize Educational Advantages. — Elections may be called in any area of a county administrative unit which is enclosed in one common boundary line to ascertain the will of the voters as to whether there shall be levied and collected a special tax to supplement and equalize the standards on which the schools in such areas are operated, and at the same time repeal any special taxes heretofore voted by any part or parts of such area.

(e) To Abolish a Special School Tax. — Elections may be called in any administrative unit, district or other school area which has previously voted a supplemental tax, to ascertain the will of the people as to whether such tax shall be abolished.

(f) To Vote School Bonds. — Boards of county commissioners are authorized as provided by law to call elections to ascertain the will of the voters as to whether bonds for school purposes may be issued.

(g) To Provide a Supplemental Tax on a Countywide Basis after Petition for Consolidation of City or County Administrative Units. — Elections may be called for an entire county on the question of a special tax to supplement the current expense funds from State and county allotments and thereby operate schools of a higher standard by supplementing any item of expenditure in the school budget, where the boards of education of all the city administrative units in said county have petitioned the county board of education for a consolidation with the county administrative unit, pursuant to the provisions of G.S. 115-74 and prior to the approval of said petitions by the county and State boards of education. In which event, and provided the petitions so specify, if said election for a countywide supplemental tax fails to carry, said petitions may be withdrawn and any existing supplemental tax theretofore voted in any of the city administrative units involved or in the county administrative unit, shall not be affected. If the vote for the countywide supplemental tax carries, said tax shall not be levied unless and until the consolidation of the units involved shall be completed according to the requirements of G.S. 115-74.

(h) To Annex or Consolidate Areas or Districts from Contiguous Counties and to Provide a Supplemental School Tax in Such Annexed Areas or Consolidated Districts. — An election may be called in any district or districts or other school area or areas, from contiguous counties, as to whether the district or districts, in one county shall be enlarged by annexing or consolidating therewith any adjoining district or districts, or other school area or areas from an adjoining county, and if a special or supplemental school tax is levied and collected in the district or districts of the county to which the territory is to be annexed or consolidated, whether upon such annexation or consolidation there shall be levied and collected in the territory to be annexed or consolidated the same special or supplemental tax for schools as is levied and collected in the district or districts in the other county. If such election carries, the said special or supplemental tax shall be levied and collected by the county wherein such territory lies and remitted to the county school fund of the county already levying and collecting such special or supplemental tax; provided, that notwithstanding the provisions of G.S. 115-122.1, if the notice of election clearly so states, and the election shall be held prior to August 1, the annexation or consolidation shall be effective and the tax so authorized shall be levied and collected beginning with the fiscal year commencing July 1 next preceding such election. (1955, c. 1372, art. 14, s. 1; 1957, c. 1066; c. 1271, s. 1; 1959, c. 573, s. 9; 1961, c. 894, s. 2; c. 1019, s. 1.)

Local Modification. — Brunswick, as to subsection (a) as affecting Southport School District: 1959, c. 600; Lincoln, as to subsection (g): 1959, c. 480, s. 1; Mecklenburg: 1959, c. 378, s. 22.

Editor's Note. — Section 115-74, referred to in subsection (g), no longer provides for consolidation of city and county administrative units. See now § 115-74.1.

The clear intent of this Article is to provide

a method by which the county commissioners may be compelled to call an election to obtain a tax levy or for other purposes. Harris v. Board of Comm'rs, 1 N.C. App. 258, 161 S.E.2d 213 (1968).

Additional Tax to Supplement Teachers' Salaries. — In levying an additional tax for the purpose of supplementing teachers' salaries pursuant to § 115-80(a), the board of county commissioners acts as an agency of the State under a delegation of authority from the General Assembly to carry out the duty imposed upon it by N.C. Const., Art. IX, § 2, to maintain a system of public schools. Harris v. Board of Comm'rs, 1 N.C. App. 258, 161 S.E.2d 213 (1968).

None of the statutes in this Article would prohibit the county commissioners, upon a proper finding of necessity, from levying an additional tax to supplement the current expense fund for the purpose of supplementing teachers' salaries, if the county commissioners are otherwise authorized to do so. Harris v. Board of Comm'rs, 1 N.C. App. 258, 161 S.E.2d 213 (1968).

Decisions under Former Statutes. — As to local tax elections for schools, see Gill v. Board of Comm'rs, 160 N.C. 176, 76 S.E. 203 (1912); Chitty v. Parker, 172 N.C. 126, 90 S.E. 17 (1916); Sparkman v. Board of Comm'rs, 187 N.C. 241, 121 S.E. 531 (1924); Evans v. Mecklenburg County, 205 N.C. 560, 172 S.E. 323 (1934); Forester v. North Wilkesboro, 206 N.C. 347, 174 S.E. 112 (1934); Freeman v. City of Charlotte, 206 N.C. 913, 174 S.E. 453 (1934); Onslow County Bd. of Educ. v. Onslow County Bd. of Comm'rs, 240 N.C. 118, 81 S.E.2d 256 (1954). As to elections on the question of enlarging local tax districts, see Perry v. Board of Comm'rs, 183 N.C. 387, 112 S.E. 6 (1922); Hicks v. Board of Educ., 183 N.C. 394, 112 S.E. 1 (1922); Barnes v. Board of Comm'rs, 184 N.C. 325, 114 S.E. 398 (1922); Board of Educ. v. Bray Bros. Co., 184 N.C. 484, 115 S.E. 47 (1922); Vann v. Board of Comm'rs, 185 N.C. 168, 116 S.E. 421 (1923); Plott v. Board of Comm'rs, 187 N.C. 125, 121 S.E. 190 (1924); Blue v. Board of Trustees, 187 N.C. 431, 122 S.E. 19 (1924); Jones v. Board of Educ., 187 N.C. 557, 122 S.E. 290 (1924); Carr v. Little, 188 N.C. 100, 123 S.E. 625 (1924).

Applied in Bridges v. City of Charlotte, 221 N.C. 472, 20 S.E.2d 825 (1942).

Quoted in Jordan v. Board of Comm'rs, 245 N.C. 290, 95 S.E.2d 884 (1957).

Cited in Harris v. Board of Comm'rs, 274 N.C. 343, 163 S.E.2d 387 (1968).

§ 115-117. Maximum rate and frequency of elections. — In no event shall a tax for supplementing the current expense fund budget exceed fifty cents (50¢) on the one hundred dollars' ($100.00) valuation of property, real and personal: Provided, that in any school administrative unit, district, or other school area having a total population of not less than 100,000 said local annual tax that may be levied shall not exceed sixty cents (60¢) on one hundred dollars' ($100.00) valuation of said property.

In the event that a majority of those who shall vote in any election called pursuant to the provisions of this Article do not vote in favor of the purpose for which such election is called, another election for the same purpose shall not be called for and held in the same unit, district, or area until the lapse of six months after such prior election; but the foregoing time limitation shall not apply to any election held in any unit, district, or other school area which is larger or smaller than the unit, district, or area in which such prior election shall have been held, or to any election held for a different purpose than such prior election. (1955, c. 1231; c. 1372, art. 14, s. 2; 1957, c. 1271, s. 2; 1959, c. 573, s. 10.)

Local Modification. — City of Lumberton: 1973, c. 1030.

§ 115-118. Who may petition for election. — County and city boards of education may petition the board of county commissioners for an election in their respective administrative units or for any school area or areas therein.

In county administrative units, for any of the purposes enumerated in G.S. 115-116, the school committee of a district, or a majority of the committees in an area including a number of districts, or a majority of the qualified voters who have resided for the preceding 12 months in a school area less than a district, and which area is adjacent to a city unit or a district to which it is desired to

be annexed and which can be included in a common boundary with said unit or district, or the committee of a district formed from portions of two or more contiguous counties, may petition the county board of education for an election.

The school committee of a district, or the majority of the committees in an area including a number of districts, or a majority of the qualified voters who have resided for the preceding 12 months in a school area less than a district, and which area, district, districts or territory is adjacent to a district or districts in a contiguous county to which it is desired to be annexed or consolidated, and with the approval of the county board of education of the contiguous county to which it is desired to be annexed or consolidated, may petition the county board of education for an election. (1955, c. 1372, art. 14, s. 3; 1961, c. 1019, s. 2.)

Quoted in Jordan v. Board of Comm'rs, 245 N.C. 290, 95 S.E.2d 884 (1957).

§ 115-119. Necessary information in petitions. — The petition for an election shall contain such of the following information as may be pertinent to the proposed election:

(1) Purpose or purposes for calling the proposed election.

(2) A legally sufficient description of the area, by metes and bounds or otherwise, in which the election is requested.

(3) The maximum rate of tax which is proposed to be levied. This subdivision shall not apply to a petition for an election to enlarge a city administrative unit.

(4) If the petition is for an election to enlarge a city administrative unit, it shall state therein that, if a majority of those who shall vote in the area proposed to be consolidated with the city administrative unit shall vote in favor of such enlargement, such area shall be consolidated with the city administrative unit, effective July 1 next following such election, and that there shall thereafter be levied in such area so consolidated with the city administrative unit the same school taxes as shall be levied in the other portions of the city administrative unit, including any tax to provide for the payment of school bonds theretofore issued by or for such city administrative unit or for all or some part of the school area annexed to such city administrative unit, unless payment of such bonds has otherwise been provided for.

(5) If the petition for an election is to supplement and equalize educational advantages, and if any school district or districts in the area in which it is proposed to vote such a tax have heretofore voted a supplementary tax, the petition and the notice of election shall state that in the event such election is carried, it will repeal all local taxes heretofore voted in any district except those in effect for debt service in any district, unless such debt service obligation is assumed by the county or otherwise provided for. (1955, c. 1372, art. 14, s. 4; 1957, c. 1271, ss. 3-5.)

Local Modification. — Lincoln, as to subdivision (5): 1959, c. 480, s. 2.

Cited in Jordan v. Board of Comm'rs, 245 N.C. 290, 95 S.E.2d 884 (1957).

§ 115-120. Boards of education must consider petitions. — The board of education to whom the petition requesting an election is addressed shall receive the petition and give it due consideration. If, in the discretion of the board of education, the petition for an election shall be approved, it shall be endorsed by the chairman and the secretary of the board and a record of the endorsement shall be made in the minutes of the board. Petitions for an election to enlarge

a city administrative unit shall be subject to the approval and endorsement of both county and city boards of education which are therein affected.

County and city boards of education shall have no discretion in granting an election to abolish a special school tax in any administrative unit, or district, or other school area, which has previously voted a supplemental tax, whenever a majority of the qualified voters residing in said unit, district or school area shall petition for an election. When such a petition, showing the proper number of names of qualified voters, is presented to a board of education, it is hereby made mandatory that such petition shall be granted and the election held. If at the election a majority of those in the district who have voted thereon have voted "against local tax," the tax shall be deemed revoked and shall not be levied: Provided, that in Alexander, Anson, Beaufort, Buncombe, Carteret, Catawba, Chatham, Chowan, Cleveland, Craven, Currituck, Davidson, Duplin, Franklin, Gates, Greene, Henderson, Hoke, Hyde, Iredell, Jackson, Johnston, Lenoir, Martin, Mecklenburg, Moore, Nash, Onslow, Pamlico, Pitt, Randolph, Richmond, Robeson, Rockingham, Transylvania, Vance, Wake, Warren and Wilkes Counties, petition of twenty-five percent (25%) of the number of voters in the election creating said special tax district, said petition to be signed by qualified voters residing in such special tax district, shall be sufficient.

The provisions of this section as to abolishing local tax districts shall not be applied when such local tax district is in debt in any sum whatever, or has obligated or committed its resources in any contractual manner: Provided, that no election for revoking a local tax in any local tax district shall be ordered and held in the district within less than one year from the date of the election at which the tax was voted and the district established, nor at any time within less than one year after the date of the last election on the question of revoking the tax in the district; and no petition seeking to revoke a school tax shall be approved by a board of education more often than once a year.

If the petition for an election in an area containing a number of districts is signed by the school committeeman of at least a majority of the school districts within a proposed special school taxing area, the board of education in such administrative unit shall endorse such petition and the election shall be held. (1955, c. 1372, art. 14, s. 5; 1957, c. 1100.)

Time for Holding Subsequent Election Revoking Local Tax. — The one-year (formerly two-year) period in which no election may be had should be computed from the last valid election on the subject. Weesner v. Davidson County, 182 N.C. 604, 109 S.E. 863 (1921).

§ 115-121. Action of board of county commissioners or governing body of municipality. — Petitions requesting special school elections and bearing the approval of the board of education of the unit shall be presented to the board of county commissioners, and it shall be the duty of said board of county commissioners to call an election and fix the date for the same: Provided, that the board of education requesting the election may, for any reason deemed sufficient by said board which shall be specified and recorded in the minutes of the board, withdraw the petition before the close of the registration books, and if the petition be so withdrawn, the election shall not be held unless by some other provision of law the holding of such election is mandatory. In the case of a city administrative unit in any incorporated city or town and formed from portions of contiguous counties, said petition shall be presented to the governing body of the city or town situated within, coterminous with, or embracing such city administrative unit, and the election shall be ordered by said governing body, and said governing body shall perform all the duties pertaining to said election performed by the board of county commissioners in elections held under this Article. (1955, c. 1372, art. 14, s. 6; 1959, c. 72.)

Opinions of Attorney General. — Mr. Robert L. Edwards, Superintendent, Madison County Public Schools, 40 N.C.A.G. 203 (1969).

Duty of County Commissioners Ministerial. — The county commissioners have no discretion to order or not order an election. After the board of education has approved the petition, the duty of the commissioners is ministerial only and may be enforced by mandamus. Board of Educ. v. Board of County Comm'rs, 189 N.C. 650, 127 S.E. 692 (1925).

Quoted in Jordan v. Board of Comm'rs, 245 N.C. 290, 95 S.E.2d 884 (1957).

§ 115-122. Rules governing elections. — In all elections held under this Article, the board of county commissioners shall designate the polling place or places, appoint the registrars and judges of election, canvass and judicially determine the results of said election when the returns have been filed with them by the officers holding the election, and record such determination on their records.

If the purpose of the election is to enlarge a city administrative unit, the notice of election shall include the following: a statement of the purpose of the election; a legal description of the area within which the election is to be held; and a statement that if a majority of those who shall vote in the area proposed to be consolidated with the city administrative unit shall vote in favor of such enlargement such area shall be consolidated with the city administrative unit, effective July 1 next following such election, and there shall thereafter be levied in such area so consolidated with the city administrative unit the same school taxes as shall be levied in the other portions of the city administrative unit, including any tax levy to provide for the payment of school bonds theretofore issued by or for such city administrative unit or for all or some part of the school area annexed to such city administrative unit, unless payment of such bonds has otherwise been provided for.

If the election is to be held for any other purpose permitted by this Article, the notice of election shall include the following: a statement of the purpose of the election; a legal description of the area within which the election is to be held; and, if any additional tax is proposed to be levied, the maximum rate of tax proposed to be levied, which shall not exceed the maximum prescribed by this Article, and the purpose of the tax.

The notice of the election shall be given by publication at least once a week for at least three weeks in some newspaper published in, or having a general circulation in, the area in which the election is to be held. The first publication of such notice shall be made not less than 30 days before the election.

New registration of the qualified voters of the territory shall be ordered, unless the territory embraces an entire county or other organized political subdivision with current registration books; and in all cases a new registration may be ordered in the discretion of the board of county commissioners. Notice of said new registration shall be deemed to be sufficiently given by publication once in some newspaper published or circulated in said district at least 20 days before the close of the registration books. This notice of registration may be considered one of the three notices required of the election. Such published notice of registration shall state the days on which the books will be open for registration of voters and the place or places at which the books will be open on Saturdays. The books of such new registration shall close on the second Saturday before the election. The Saturday before the election shall be challenge day, and except as otherwise provided in this Article, such election shall be held in accordance with the law governing general elections.

The ballots to be used in said election shall include, among other matter written or printed thereon, the words "For Local Tax" and "Against Local Tax" for all elections called under this Article except those called under subsection (c) of G.S. 115-116, in which case the ballots shall have written or printed thereon the words "For Enlargement of the (here insert name of city) City

Administrative Unit and school tax of the same rate" and "Against Enlargement of the (here insert name of city) City Administrative Unit and school tax of the same rate."

All other details of said election shall be fixed by the board of county commissioners ordering the election, and the expense of holding and conducting the election shall be provided by the board of education of the administrative unit in which the election is held: Provided, that where territory is proposed to be added to a city administrative unit, the expense shall be borne by such unit.

In all cases where an election is called and held under the provisions of this Article, and a majority of the qualified voters voting at such election voted in favor of the tax or of propositions submitted, and the results of such election have been officially determined and recorded in the minutes of the board of county commissioners, the validity of such election, and of the registration for such election, shall not be open to question except in an action or proceeding commenced within 30 days after the determination of the results of such election. (1955, c. 1372, art. 14, s. 7; 1957, c. 1271, ss. 6, 7.)

Cross Reference. — As to time registration books must be kept open, see § 163-31.

Notice of Election. — It is not necessary that the newspaper, in which the notice of election is given, be published in the district; it is sufficient if the paper is circulated in the district where the election is to be held. Miller v. Duke School Dist., 184 N.C. 197, 113 S.E. 786 (1922).

Failure to give the notice of election is immaterial where such failure does not affect the result of the election. Younts v. Commissioners of Union County, 151 N.C. 582, 66 S.E. 575 (1909); Gregg v. Board of Comm'rs, 162 N.C. 479, 78 S.E. 301 (1913).

§ 115-122.1. Effective date; levy of taxes. — (a) If, in any election authorized by this Article, a majority of the voters voting in such election vote in favor of the enlargement of a city administrative unit, such enlargement shall become effective July 1 next following such election; and thereafter there shall be levied and collected in the area consolidated with the city administrative unit the same school taxes as shall be levied in the other portions of the city administrative unit.

(b) If, in any election authorized by this Article, a majority of the voters voting in such election vote in favor of a supplemental tax, or in favor of the increase of a supplemental tax, or in favor of a tax to supplement and equalize educational advantages, the tax so authorized shall be levied and collected beginning with the fiscal year commencing July 1 next following such election. (1957, c. 1271, s. 8.)

Opinions of Attorney General. — Mr. Rom B. Parker, Halifax County Attorney, 40 N.C.A.G. 265 (1969).

§ 115-122.2. Conveyance of school property upon enlargement of city administrative unit. — Before any election is called to enlarge a city administrative unit, if any school property is located in the area proposed to be consolidated with the city administrative unit, the board of education of such city administrative unit and the board of education of the county administrative unit concerned shall agree with each other as to the school property to be conveyed and transferred to the board of education of the city administrative unit if a majority of the voters voting in the election vote in favor of such enlargement. And, if such enlargement is authorized by such election, the board of education of the county administrative unit shall, within 10 days after July 1 next following such election, convey and transfer to the board of education

of the city administrative unit the property so agreed to be conveyed and transferred. (1957, c. 1271, s. 8.)

§ 115-123. Elections in districts created from portions of contiguous counties. — Districts already created and those that may be created from portions of two or more contiguous counties may hold elections under this Article to be incorporated or to vote a special local tax therein for the purposes enumerated in G.S. 115-116.

Elections for either purpose must be initiated by petitions from the portion of each county included in the district, or the proposed district. In districts already created, the majority of the committeemen must sign the petition. In proposed districts, the petition must be signed by fifteen percent (15%) of the qualified voters who shall have resided in such area for the preceding 12 months. When the petitions shall have been approved by each of the boards of education of such contiguous counties, they shall then be presented by each of said boards of education to their respective boards of county commissioners.

The boards of commissioners of each of the contiguous counties, in compliance with the provisions of this Article relating to the conduct of local tax elections, shall then call and hold an election in that portion of the proposed district lying in its county. Election returns shall be made from each portion of the proposed district to the board of commissioners ordering the election in that portion, and the returns shall be canvassed and recorded as required in this Article for local tax districts.

If a majority of the voters who vote thereon in each of the counties shall vote in favor of the tax, or for incorporation, the election shall be determined to have carried in the whole district, and shall be so recorded in the records of the board of county commissioners in each county in which the district is located.

If the proposition submitted to the voters in the election is a question of incorporating the district, the ballots for this election shall have printed thereon the words "For incorporation" and "Against incorporation." If the election for incorporation is carried, the district is thereby incorporated and shall possess all the authority of incorporated districts.

In case the election carried in each portion of the proposed district, the several county boards of education concerned shall each pass a formal order consolidating the territory into one joint local tax district, which shall be and become a body corporate by the name and style of ". . . . . Joint Local Tax School District of . . . . . Counties." The county board of education having the largest school census and the largest area in the part of the joint local tax district lying in its county shall determine the location of the schoolhouse; but if the largest census and largest area do not both lie in the same county, then the county boards shall jointly select the site for the building; and in case of a disagreement they shall submit the question to a board of arbitration consisting of three members, one member to be named by each board of education if three counties are concerned, or if there are but two counties, then each board shall choose one member and the two so named shall select the third member. The decision of this board of arbitration shall be binding on all county boards of education concerned.

The school committee shall consist of five members, three of whom shall be appointed by the board of education of the county in which the building is to be situated and two to be appointed by the other county or counties, but the terms of office shall be so arranged that not more than two members will retire in any one year. The committee shall officially exercise such corporate powers as are conferred by this section. This committee shall have all the powers and duties of committees of local tax districts, and in addition thereto it shall adopt a corporate seal and have the power to sue and be sued in its corporate name. The committee shall have the power to determine the rate of local taxes to be levied in said joint district, not exceeding the rate authorized by the voters of

the district, and when the committee shall have so determined the rate of local taxes to be levied in said joint district and shall have certified same to the boards of commissioners of the several counties from which said joint district is created, the said boards of county commissioners, and each of them, shall levy said rate of local taxes within the portion of said joint district lying within their respective counties; and the taxes so levied shall be collected in the several counties as other taxes are collected therein, and shall be paid over by the officers collecting the same to the treasurer or other fiscal agent of the county in which the schoolhouse is located, or is to be located, to be by him placed to the credit of the joint district.

The committee shall have as full authority to call and hold elections for the voting of bonds of the district as is conferred upon boards of education and boards of commissioners. In calling the election for a bond issue, no petition of the county board of education shall be necessary; but the election shall be called and held by the school committee of the incorporated local tax school district under as ample authority as is conferred upon both county boards of education and boards of commissioners. When bonds of the district have been voted under authority of this section, they shall be issued subject to the limitations of the Local Government Act and County Fiscal Control Act in the corporate name of the district, signed by the chairman and secretary of the school committee sold by the school committee, and the proceeds thereof deposited with the treasurer of the county board of education of the county in which the school building is, or is to be, located, to be placed to the credit of the joint district, and the taxes for the payment of principal and interest shall be levied and collected as provided hereinabove for the levy and collection of local taxes: Provided, that certified copies of the bond orders and resolutions shall be recorded on the minutes of the board of commissioners of each county constituting a part of the joint school district.

The building of all schoolhouses in such joint local tax districts shall be effected by the county board of education of the county in which the building is to be located under authority of law governing the erection of school buildings by county boards of education. It shall be lawful for the boards of education in the other county or counties to contribute to the cost of the building in proportion to the number of children shown by the official census to be resident within that part of the joint district lying within each county respectively. If the building is to be erected from moneys borrowed from the State Literary Fund or from county taxation, then each county board of education shall contribute to its construction in the proportion set out above and pay over its contribution to the treasurer of the county board having control of the erection of the building: Provided, it shall be lawful for the county board that controls the erection of the building to borrow from the State and lend to the district the full amount of the cost of the building in cases where the entire amount, or part of the amount, is to be repaid by the district from district funds.

All district funds of a joint local tax district shall be kept distinct from all other funds, placed to the credit of the district, and expended as other local tax or district bond funds are lawfully disbursed.

The county board of education and county superintendent of schools of the county in which the schoolhouse is located shall have as full and ample control over the joint school and the district as it has in the case of other local tax districts, subject only to the limitations of this section.

The committee of the joint school district shall prepare a budget annually in accordance with the law governing budgets in which the committee will indicate objects and items of expenditure which are proposed to be made from the collection of the special tax of the district. This budget shall show the proportionate part of the expense to be contributed by each county, which part shall be ascertained on the basis of the proportions of the total district school

census living in each respective county. When this budget is completed by the committee of the joint district, a copy of it shall be filed with the county board of education of each county, and it shall be the duty of each board of education, if it approves the district budget, to incorporate it in the county budget to be submitted to the board of commissioners of each county. Each of the several county boards of education is hereby directed to pay over its proportionate part of the district budget, when and as collected, to the treasurer of the board of education of the county in which the school plant is located for the purposes for which it has been levied and collected.

All districts formed from portions of contiguous counties before the ratification of this Article are hereby authorized and empowered to exercise all the powers and privileges conferred by this Article. (1955, c. 1372, art. 14, s. 8.)

§ 115-124. Levy and collection of taxes. — In cases where administrative units or districts have voted, or may hereafter vote, a tax in order to operate schools of a higher standard than that provided by State support, county and city boards of education, at the same time the other budgets are filed, shall file a supplemental budget therefor and request that a sufficient levy be made by the tax-levying authorities, not in excess of the rate voted by the people in such unit or district. The tax-levying authorities may approve or disapprove this supplemental budget in whole or in part, and shall levy such taxes as necessary to provide for the approved budget for supplemental purposes, not exceeding the amount of the tax levy authorized by the vote of the people. The expenditure of the proceeds of said levy shall be in accordance with the aforesaid supplemental budget as approved by the tax-levying authorities: Provided, that the tax-levying authorities may fix a charge against any administrative unit or district for collection of such levies not exceeding one percent (1%) thereof. The superintendent of schools, the county accountant or auditor, the officer in charge of tax records, and the county treasurer shall keep records in their respective offices, showing the valuation of all property in the unit, district, or area; the rate of tax authorized annually to be levied, and the amount annually derived from the local tax. It shall be illegal for any part of the local tax fund to be used for any purpose other than those purposes authorized by the election in the unit, or district. (1955, c. 1372, art. 14, s. 9; 1965, c. 584, s. 12.)

Cited in Harris v. Board of Comm'rs, 274 N.C. 343, 163 S.E.2d 387 (1968).

SUBCHAPTER VI. SCHOOL PROPERTY.

ARTICLE 15.

School Sites and Property.

§ 115-125. Acquisition of sites. — County and city boards of education may acquire suitable sites for schoolhouses or other school facilities either within or without the administrative unit; but no school may be operated by an administrative unit outside its own boundaries, although other school facilities such as repair shops, may be operated outside the boundaries of the administrative unit. Whenever any such board is unable to acquire or enlarge a suitable site or right-of-way for a school, school building, school bus garage or for a parking area or access road suitable for school buses or for other school facilities by gift or purchase, condemnation proceedings to acquire same may be instituted by such board under the provisions of Article 2, Chapter 40 of the General Statutes, and the determination of the county or city board of education of the land necessary for such purposes shall be conclusive; provided that not more than a total of 50 acres shall be acquired by condemnation for any one site

for a schoolhouse or other school facility as aforesaid. (1955, c. 1335; c. 1372, art. 15, s. 1; 1957, c. 683; 1969, c. 516; 1971, c. 290.)

Editor's Note. — For an article urging revision and recodification of North Carolina's eminent domain laws, see 45 N.C.L. Rev. 587 (1967).

Opinions of Attorney General. — Mr. W. Earl Britt, Attorney for Fairmont Board of Education, 40 N.C.A.G. 216 (1969).

Constitutionality. — This section does not violate the requirements of just compensation and due process provided by the 14th Amendment to the United States Constitution. Doby v. Brown, 135 F. Supp. 584 (M.D.N.C. 1955), aff'd, 232 F.2d 504 (4th Cir. 1956).

History of Section. — See Board of Educ. v. Forrest, 190 N.C. 753, 130 S.E. 621 (1925).

Intent of 1957 Amendment. — The legislative intent, in enacting Session Laws 1957, c. 683, was to rewrite Session Laws 1955, c. 1372, art. 15, s. 1. Topping v. State Bd. of Educ., 249 N.C. 291, 106 S.E.2d 502 (1959).

Proceedings Instituted under § 40-2. — Condemnation proceedings for a school site must be considered as instituted under the provisions of § 40-2, pursuant to authority conferred by this section. Topping v. State Bd. of Educ., 249 N.C. 291, 106 S.E.2d 502 (1959).

The word "site" is broad enough to embrace such land, not exceeding the statutory limit, as may reasonably be required for the suitable and convenient use of the particular building; and land taken for a playground in conjunction with a school may be as essential as land taken for the schoolhouse itself. 24 R.C.L. 582.

Discretion of School Authorities. — The question of changing the location of a schoolhouse, as well as the selection of a site for a new one, is vested in the sound discretion of the school authorities, and their action cannot be restrained by the courts, unless it is in violation of some provision of the law, or the authorities have been influenced by improper motives, or there has been a manifest abuse of discretion on their part. Atkins v. McAden, 229 N.C. 752, 51 S.E.2d 484 (1949); Wayne County Bd. of Educ. v. Lewis, 231 N.C. 661, 58 S.E.2d 725 (1950); Feezor v. Siceloff, 232 N.C. 563, 61 S.E.2d 714 (1950).

While school authorities have the discretionary power to select sites for new schools and to change the location of existing schools, their action in this regard may be enjoined when it is without authority of law, or when the selection of a proposed site is so clearly unreasonable as to amount to a manifest abuse of their discretion. Brown v. Candler, 236 N.C. 576, 73 S.E.2d 550 (1952).

The advisability of taking the property for public school use is a matter committed to the sound discretion of the petitioner, with the exercise of which neither the respondents nor the courts can interfere. Burlington City Bd. of Educ. v. Allen, 243 N.C. 520, 91 S.E.2d 180 (1956).

Facts Not Showing Abuse of Discretion. — The fact that the site for a high school selected by the school authorities in a mountainous section of the State may be approached only by a crooked highway and over a narrow bridge, and that there may be other satisfactory sites for such school, does not compel or support the conclusion that the school authorities abused their discretion in selecting the site. Brown v. Candler, 236 N.C. 576, 73 S.E.2d 550 (1952).

Selection of Site on Grounds of County Home. — Former § 153-9 did not preclude school authorities from selecting, without advertising, a part of the grounds of a county home for the site of a high school when its use would not interfere with the use of the remainder of the site for a county home. Brown v. Candler, 236 N.C. 576, 73 S.E.2d 550 (1952).

High School and Elementary School on Adjoining Sites. — A high school and an elementary school may be located on adjoining sites. However, neither site may contain more than 10 (now 30) acres of land, if any part thereof must be obtained by condemnation. Wayne County Bd. of Educ. v. Lewis, 231 N.C. 661, 58 S.E.2d 725 (1950).

Where the county board of education selects a site for an elementary school contiguous to its high school site, it may condemn for such elementary school site lands not in excess of 10 (now 30) acres, since the board has the discretionary power to locate the schools on adjoining sites. Wayne County Bd. of Educ. v. Lewis, 231 N.C. 661, 58 S.E.2d 725 (1950).

There is no limitation on the acreage which may be purchased or donated for a school site. The limitation applies only where the site, or any part thereof, must be obtained by condemnation. In such cases, the land owned, donated or purchased, together with the adjacent lands to be condemned, shall not exceed 10 (now 30) acres. Wayne County Bd. of Educ. v. Lewis, 231 N.C. 661, 58 S.E.2d 725 (1950).

Service by Publication. — Statutes relating to service of process by publication apply to a resident defendant in a proceeding to condemn a school site, no less than to such defendant in any other special proceeding. Brown v. Doby, 242 N.C. 462, 87 S.E.2d 921 (1955).

Former Procedure. — As to procedure for condemnation of land for a school site under this section as it stood before the 1957 amendment, see Burlington City Bd. of Educ. v. Allen, 243 N.C. 520, 91 S.E.2d 180 (1956).

For case involving title to school property and decided under former statute, see Board of

Educ. v. Town of Waynesville, 242 N.C. 558, 89 S.E.2d 239 (1955).

Applied in Hobbs v. County of Moore, 267 N.C. 665, 149 S.E.2d 1 (1966).

Stated in State Hwy. Comm'n v. Greensboro City Bd. of Educ., 265 N.C. 35, 143 S.E.2d 87 (1965).

Cited in Eller v. Board of Educ., 242 N.C. 584, 89 S.E.2d 144 (1955); Redevelopment Comm'n v. Grimes, 277 N.C. 634, 178 S.E.2d 345 (1971).

§ 115-126. Sale, exchange or lease of school property; easements and rights-of-way. — (a) When in the opinion of any county board of education, or of any board of education for any city administrative unit, the use of any building, building site, or other real property owned or held by such board is unnecessary or undesirable for public school purposes, the board may sell such property at public auction. Such sale shall be held on the property to be sold or at the courthouse door in the county in which such property is located, and shall be advertised and otherwise conducted as is prescribed by statute for judicial sales of real property. The sale shall then remain open for 10 days to permit the making of an upset bid. The resale of such property following such upset bid, and the procedure therefor shall be as prescribed by statute for judicial sales of real property. If the time for making an upset bid shall expire without such bid having been made, the board may confirm the sale if it deems the highest bid to be an adequate price. Upon confirmation of the sale by the board, the chairman and the secretary of the board shall execute a deed to the purchaser of the property upon his compliance with his bid. Confirmation of the sale by the clerk of the superior court shall not be required. The proceeds of the sale shall be paid to the treasurer of the school fund of such county or city administrative unit, and shall be used either to reduce the bonded indebtedness of such administrative unit or for capital outlay purposes.

(b) When in the opinion of any county board of education, or of any board of education for any city administrative unit, the use of any property, other than real property, owned or held by such board is unnecessary or undesirable for public school purposes, the board may sell such property either through the facilities of the North Carolina Division of Purchase and Contract or at public auction. If sold at public auction such sale shall be held at such place within such county or city administrative unit as shall be designated by the board, and shall be advertised and otherwise conducted as is prescribed by statute for the sale of personal property under a power of sale contained in a chattel mortgage. Title to the property so sold shall not pass by reason of such sale until the sale has been confirmed by the board and the purchaser has complied with the terms of his bid. The proceeds of such sale shall be paid to the treasurer of the school fund of such county or city administrative unit.

(c) If in the opinion of the board the highest bid at any sale or resale of real or personal property sold pursuant to the provisions of this section is not adequate, such bid may be rejected and the property may again be advertised for sale as provided in this section, or may be sold by the board at a private sale for a price in excess of the highest bid at such public sale: Provided such private sale is consummated within a period of one year from the date of the initial public offering.

Any sale of real property at private sale made prior to May 1, 1959, is hereby validated, provided the real property so sold was first advertised for sale at public auction as provided by this section and the price received therefor was in excess of the highest bid received at such public offering.

(d) In the acquisition by it of any property for public school purposes any county board of education, or any board of education for any city administrative unit, may exchange therefor, as full or partial payment therefor, any property owned or held by it, without compliance with the provisions of this section: Provided, that for at least 10 days before any exchange of real property shall be consummated, the terms of such proposed exchange shall be filed in the office

of the superintendent of schools of such administrative unit and in the office of the clerk of the superior court in the county in which such property is located, and a notice thereof published one or more times in a newspaper having a general circulation in the administrative unit at least 10 days before the consummation of said exchange.

(e) When in the opinion of any county board of education, or of the board of education for any city administrative unit, the use of any property owned or held by it is unnecessary or undesirable for public school purposes, but the sale of such property is not practicable or in the public interest, such board may in its discretion enter into an agreement with any other person, firm or corporation for the lease of such property to such person, firm or corporation for a term not in excess of one year, upon such terms and conditions as the board shall deem advisable and in the public interest.

(f) In addition to the foregoing, county and city boards of education are hereby authorized and empowered, in their sound discretion, to grant easements to any public utility, municipality or quasi-municipal corporation to furnish utility services to school property, with or without compensation except the benefits accruing by virtue of the location of the said public utility, and to dedicate portions of any lands owned by such boards as rights-of-way for public streets, roads or sidewalks, with or without compensation except the benefits accruing by virtue of the location or improvement of such public streets, roads or sidewalks. (1955, c. 1372, art. 15, s. 2; 1959, c. 324; c. 573, s. 11; 1961, c. 395.)

Local Modification. — Burke: 1959, c. 1037; Craven: 1965, c. 143; Franklin: 1959, c. 213; Greene: 1965, c. 784; Nash: 1963, c. 1038; 1965, c. 731; Transylvania: 1953, c. 723; city of Asheboro, as to subsection (e): 1969, c. 233.

Cross Reference. — As to sale, lease, exchange and joint use of governmental property by State and local governmental units, see § 160A-274.

Lease of Surplus Lands. — A city school administrative unit contemplated by § 115-4 is a governmental agency separate and distinct from the city, and such administrative unit, having acquired more land than presently needed for school purposes, has legislative authority to lease the surplus, under this section, either for a public or a private purpose, so long as it exercises its discretion in good faith. Where the lease stipulates that use shall be for a public or semi-public purpose, the law will presume the parties intended and contemplated use of the property without unlawful discrimination because of race, color, religion or other illegal classification. State v. Cooke, 248 N.C. 485, 103 S.E.2d 846 (1958).

Delegation of Authority. — Where a chartered school district acquired property by foreclosure of a loan made from its sinking fund, the property thus acquired being in no way connected with the operation of its schools, and the trustees of the district instructed the property committee to consider any offers for the property in excess of a stipulated sum, and delegated "power to act" in the matter, and where the chairman thereafter entered into a contract for the sale of the property for a price in excess of the minimum amount stipulated by the trustees, upon a suit by a taxpayer of the district to restrain conveyance to the purchaser in the contract, it was held that the trustees of the district were without power to delegate authority to sell the school property, and the district was not bound by the contract entered into and a decree restraining the execution of the contract was proper. Bowles v. Fayetteville Graded Schools, 211 N.C. 36, 188 S.E. 615 (1936).

Cited in Duplin County Bd. of Educ. v. Carr, 15 N.C. App. 690, 190 S.E.2d 653 (1972).

§ 115-127. Deeds to property. — All deeds to school property shall, after registration, be delivered to the superintendent of the administrative unit in which the property is located and he shall provide a safe place for preserving all such deeds. (1955, c. 1372, art. 15, s. 3.)

§ 115-128. Vehicles owned by boards of education exempt from taxation; registration. — All school buses, trucks, automobiles and other motor vehicles owned by county and city boards of education and used for transporting pupils to and from school or used by other school personnel in the prosecution of their

work, shall be exempt from taxation, but all such vehicles shall be duly registered in the Department of Motor Vehicles as provided in G.S. 20-84. (1955, c. 1372, art. 15, s. 4.)

Local Modification. — City of Greensboro: 1969, c. 973.

§ 115-129. Provisions for school buildings and equipment. — It shall be the duty of the boards of education of the several administrative school units of the State to make provisions for the nine months' school term by providing adequate school buildings equipped with suitable school furniture and apparatus. The needs and the cost of such buildings, equipment, and apparatus, shall be presented each year when the school budget is submitted to the respective tax-levying authorities. The boards of commissioners shall be given a reasonable time to provide the funds which they, upon investigation, shall find to be necessary for providing their respective units with buildings suitably equipped, and it shall be the duty of the several boards of county commissioners to provide funds for the same.

Upon determination by a county or city board of education that the existing permanent school building does not have sufficient classrooms to house the pupil enrollment anticipated for such school, then such city or county board of education is authorized to acquire and utilize as temporary classrooms for the operation of such school, relocatable or mobile classroom units, which units and method of use shall meet the approval of the School Planning Division of the State Board of Education, and which units shall comply with all applicable requirements of the North Carolina State Building Code and of the local building and electrical codes applicable to the area in which such school is located. The acquisition and installation of such units shall be subject in all respects to the provisions of Chapter 143 of the General Statutes. The provisions of Chapter 87, Article 1, of the General Statutes, shall not apply to persons, firms or corporations engaged in the sale or furnishing to county and city boards of education and the delivery and installation upon school sites of classroom trailers as a single building unit or of relocatable or mobile classrooms delivered in less than four units or sections. (1955, c. 1372, art. 15, s. 5; 1969, c. 1022, s. 1.)

Board of Education Presents Needs to Commissioners. — Each year the board of education surveys the needs of its school system with reference to buildings and equipment. By resolution it presents these needs, together with their costs, to the commissioners, who are given a reasonable time to provide the funds which they, upon investigation, shall find to be necessary for providing their respective units with buildings suitably equipped. Dilday v. Beaufort County Bd. of Educ., 267 N.C. 438, 148 S.E.2d 513, 149 S.E.2d 345 (1966).

Courts Cannot Interfere with Discretion of Board of Education Unless Abused. — The board of education determines, in the first instance, what buildings require repairs, remodeling, or enlarging; whether new schoolhouses are needed; and if so, where they shall be located. Such decisions are vested in the sound discretion of the board of education, and its actions with reference thereto cannot be restrained by the courts absent a manifest abuse of discretion or a disregard of law. Dilday v. Beaufort County Bd. of Educ., 267 N.C. 438, 148 S.E.2d 513, 149 S.E.2d 345 (1966).

Commissioners to Determine What Expenditures Shall Be Made. — The board of commissioners of the county, and not the board of education, is charged with the duty to determine what expenditures shall be made for the erection, repair and equipment of school buildings in the county. Johnson v. Marrow, 228 N.C. 58, 44 S.E.2d 468 (1947).

The county board of education surveys annually the needs of the county school system in respect to school plant facilities and equipment and by resolution presents its plan to the board of commissioners. Then, and only then, it becomes the duty of the board of commissioners to determine what expenditures, if any, proposed for such purposes by the board of education are necessary. When it determines that funds are necessary for any one or all of the proposed projects, then it must furnish the funds necessary to provide the facilities incorporated

in the approved projects. Parker v. Anson County, 237 N.C. 78, 74 S.E.2d 338 (1953).

The right of the board of commissioners to determine what expenditures shall be made arises when a proposal for the expenditure of funds for school facilities is made by the board of education. Having determined that question and having provided the funds it deems necessary, its jurisdiction ends and the authority to execute the plan of enlargement or improvement reverts to the board of education. Parker v. Anson County, 237 N.C. 78, 74 S.E.2d 338 (1953).

It is the board of commissioners which is charged with the duty of determining what expenditures shall be made for the erection, repairs, and equipment of school buildings in the county. Dilday v. Beaufort County Bd. of Educ., 267 N.C. 438, 148 S.E.2d 513, 149 S.E.2d 345 (1966).

But They Cannot Interfere with Authority of Board of Education. — The control of the board of county commissioners over the expenditure of funds for the erection, repair and equipment of school buildings will not be construed so as to interfere with the exclusive control of the schools vested in the county board of education or the trustees of an administrative unit. Atkins v. McAden, 229 N.C. 752, 51 S.E.2d 484 (1949); Parker v. Anson County, 237 N.C. 78, 74 S.E.2d 338 (1953).

The commissioners' control over the expenditure of funds for the erection, repair, and equipment of school buildings does not interfere with the exclusive control of the schools which is vested in the county board of education or in the trustees of administrative units. Having determined what expenditures are necessary and possible, and having provided the funds, the jurisdiction of the commissioners ends. The authority to execute the plans is in the board of education. Dilday v. Beaufort County Bd. of Educ., 267 N.C. 438, 148 S.E.2d 513, 149 S.E.2d 345 (1966).

All Expenditures Must Be Authorized. — All expenditures for the construction, repair and equipment of school buildings in a county must be authorized by the board of county commissioners, acting in good faith, pursuant to statutory and constitutional authority. Atkins v. McAden, 229 N.C. 752, 51 S.E.2d 484 (1949).

Expense a Countywide Charge. — It is the duty of the county commissioners, upon information being furnished by the county boards of education, to provide the funds necessary for suitable buildings and proper equipment, and such expenses are a countywide charge. Reeves v. Board of Educ., 204 N.C. 74, 167 S.E. 454 (1933).

Commissioners May Reallocate Proceeds of Bond Issue. — A bond order issued under former § 153-78 set out in detail the estimates and projects for which the funds were proposed to be used in discharge of the constitutional requirement of a six months' school term within the municipal administrative unit. It was held that former § 153-107 did not preclude the board of county commissioners, upon its finding, after investigation, of changed conditions, from reallocating the proceeds of bonds to different projects upon further finding, after investigation, that such reallocation of the funds was necessary to effectuate the purpose of the bond issue. Atkins v. McAden, 229 N.C. 752, 51 S.E.2d 484 (1949).

But May Not Change Purpose for Which Bonds Were Issued. — Where the county commissioners attempted to change the purpose for which school bonds were issued, such action of the commissioners was held to constitute a clear invasion of the prerogatives of the board of education. Parker v. Anson County, 237 N.C. 78, 74 S.E.2d 338 (1953).

Any change in plan must be initiated by the board of education. Then the board of commissioners, acting in good faith, may, in proper cases, after finding the facts required by statute, determine whether the reallocation of funds or the change in plans is or is not necessary, and approve or disapprove the expenditure of the funds theretofore furnished by it for the execution of the amended plan. Parker v. Anson County, 237 N.C. 78, 74 S.E.2d 338 (1953).

Applied in Lutz v. Board of Educ., 282 N.C. 208, 192 S.E.2d 463 (1972).

§ 115-130. Erection and repair of schoolhouses. — The building of all new schoolhouses and the repairing of all old schoolhouses shall be under the control and direction of, and by contract with, the board of education in which such building and repairing is done. Boards of education shall not invest any money in any new building that is not built in accordance with plans approved by the State Superintendent as to structural and functional soundness, safety and sanitation, nor contract for more money than is made available for its erection. All contracts for buildings shall be in writing and all buildings shall be inspected, received, and approved by the county or city superintendent and the architect before full payment is made therefor: Provided, that this section shall not

prohibit boards of education from repairing and altering buildings with the help of janitors and other regular employees of said board.

In the case of any school buildings erected, repaired, or equipped with any money loaned or granted by the State to any administrative unit, the State Board of Education, under such rules as it may deem advisable, may retain any amount not to exceed fifteen percent (15%) of said loan or grant, until such completed buildings, erected or repaired, in whole or in part, from such loan or grant funds, shall have been approved by a designated agent of the State Board of Education.

Upon such approval by the State Board of Education, the State Treasurer is authorized to pay the balance of the loan or grant to the treasurer of the school administrative unit for which said loan or grant was made. (1955, c. 1372, art. 15, s. 6.)

Cross Reference. — As to penalty for school officials to have pecuniary interest in school supplies, see §§ 14-236, 14-237.

Power Discretionary. — The building of a school is a matter vested by the statute in the sound discretion of the county board of education and not to be restrained by the courts, unless in violation of some provision of law, or unless the committee is influenced by improper motives, or there is misconduct on their part. Venable v. School Comm., 149 N.C. 120, 62 S.E. 902 (1908); Pickler v. County Board, 149 N.C. 221, 62 S.E. 902 (1908).

Whether a change should be made in the location of a school, as well as the selection of a site for a new one, is vested in the sound discretion of the school authorities, and their action cannot be restrained by the courts unless in violation of some provision of law, or the authorities have been influenced by improper motives, or there has been a manifest abuse of discretion on their part. Feezor v. Siceloff, 232 N.C. 563, 61 S.E.2d 714 (1950).

Money Available for Erection of Building. — Where a county board of education consolidated five existing high schools into one countywide high school with the approval of the State Board of Education, and plans for the new school building were approved by the State Superintendent of Public Instruction, and public moneys for the erection of the building were allocated to the county board of education, equity would not enjoin the county board of education from entering into a contract for the construction of the building on the ground that the county board of commissioners had refused to provide funds for the construction of the building, and that the proposed contract would offend this section, which provides that a county board of education has no authority to contract for the construction of a new schoolhouse costing more than the "money . . . available for its erection." Edwards v. Yancey County Bd. of Educ., 235 N.C. 345, 70 S.E.2d 170 (1952).

Providing Electric Lights. — Under the general statutory authority the erection of electric transmission lines to supply school buildings with electric lighting is given to the board of education of a county. But contracts for such work need not be in writing, nor need they be approved by the State Superintendent. Conrad v. Board of Educ., 190 N.C. 389, 130 S.E. 53 (1925).

§ 115-131. Board cannot erect or repair building unless site is owned by board. — County and city boards of education shall make no contract for the erection or repair of any school building unless the site upon which it is located is owned in fee simple by the said board: Provided, that the board of education of a county or city administrative unit, with the approval of the board of county commissioners is authorized to appropriate funds to aid in the establishment of a school facility and the operation thereof in an adjoining county or city administrative unit when a written agreement between the boards of education of the administrative units involved has been reached and the same recorded in the minutes of said boards, whereby children from the unit making such appropriations shall be entitled to attend the school so established.

In all cases where title to property has been vested in the trustees of a special charter district which has been abolished and has not been reorganized, title to such property shall be vested in the county or city board of education of the county embracing such former special charter district. (1955, c. 1372, art. 15, s. 7.)

Local Modification. — Hoke, Robeson, Scotland and Tyrrell: 1971, c. 1228; 1973, c. 339.

Opinions of Attorney General. — Mr. Frederick K. Walter, Assistant Superintendent, Alamance County Public Schools, 40 N.C.A.G. 232 (1969).

Not Applicable to Electric Light Wires. — A former statute similar to this section did not apply to the erection of electric light wires. It applied only to sites for school buildings; it did not extend to or include the rights-of-way. Conrad v. Board of Educ., 190 N.C. 389, 130 S.E. 53 (1925).

§ 115-132. Duty of board to provide equipment for school buildings. — It shall be the duty of county and city boards of education and tax-levying authorities to provide suitable supplies for the school buildings under their jurisdiction. These shall include, in addition to the necessary instructional supplies, proper window shades, blackboards, reference books, library equipment, maps, and equipment for teaching the sciences.

Likewise, it shall be the duty of said boards of education and boards of county commissioners to provide every school with a good supply of water, approved by the Department of Human Resources, and where such school cannot be connected to water-carried sewerage facilities, there shall be provided sanitary privies for the boys and for the girls according to specifications of the Commission for Health Services. Such water supply and sanitary privies shall be considered an essential and necessary part of the equipment of each public school and may be paid for in the same manner as desks and other essential equipment of the school are paid for. (1955, c. 1372, art. 15, s. 8; 1973, c. 476, s. 128.)

Cross Reference. — As to penalty for school officials to have pecuniary interest in school supplies, see §§ 14-236, 14-237.

Editor's Note. — The 1973 amendment substituted "Department of Human Resources" for "State Board of Health" near the middle, and "Commission for Health Services" for "State Board of Health" at the end, of the first sentence of the second paragraph.

Compliance Presumed. — A county board will not be enjoined from constructing a new school building on the grounds that it has failed to make plans for water and sewer service for the school, where it appears from the complaint that at the time the suit was instituted the construction of the proposed building had progressed only to the stage where bids had been accepted, since presumably the defendants at the proper time will comply with this section and make provision for a proper supply of water. Lamb v. Randolph County Bd. of Educ., 235 N.C. 377, 70 S.E.2d 201 (1952).

Bonds for Sanitary Improvements. — See Taylor v. Board of Educ., 206 N.C. 263, 173 S.E. 608 (1934).

§ 115-133. Duties of boards of education to keep buildings in repair and determine use of school property. — It shall be the duty of county and city boards of education and tax-levying authorities, in order to safeguard the investment made in public schools, to keep all school buildings in good repair to the end that all public school property shall be taken care of and be at all times in proper condition for use. It shall be the duty of all committeemen, principal, teachers, and janitors to report to their respective boards of education immediately any unsanitary condition, damage to school property, or needed repair. All principals, teachers, and janitors shall be held responsible for the safekeeping of the buildings during the school session and all breakage and damage shall be repaired by those responsible for same, and where any principal or teacher shall permit damage to the public school buildings by lack of proper discipline of pupils, such principal or teacher shall be held responsible for such damage: Provided, principals and teachers shall not be held responsible for damage that they could not have prevented by reasonable supervision in the performance of their duties.

Notwithstanding the provisions of G.S. 115-51, county and city boards of education shall have authority to adopt rules and regulations by which school buildings, including cafeterias and lunchrooms, may be used for other than school purposes so long as such use is consistent with the proper preservation and care of the public school property. No liability shall attach to any board of education, individually or collectively, for personal injury suffered by reason of the use of such school property. (1955, c. 1372, art. 15, s. 9; 1957, c. 684; 1963, c. 253.)

§ 115-133.1. Duties of boards of education and tax-levying authorities to insure public school buildings and equipment. — (a) The board of every administrative unit in the public school system of this State, in order to safeguard the investment made in public schools, shall

(1) Insure and keep insured to the extent of not less than seventy-five percent (75%) of the current insurable value as determined by the insurer and the insured of each of its insurable buildings against fire, lightning and the perils embraced in extended coverage; and

(2) Insure and keep insured adequately the equipment and contents of said building.

(b) The tax-levying authority for each administrative unit shall appropriate funds necessary for compliance with the provisions of subsection (a).

(c) Willful failure to comply with the provisions of (a) and (b) above, is declared a misdemeanor punishable by a fine of not more than fifty dollars ($50.00) or imprisonment for not more than 30 days. Every 24 hours without such insurance constitutes a separate offense. (1957, c. 1040.)

§ 115-133.2. Power of boards of education to offer rewards for information leading to arrest, etc., of persons damaging school property. — County and city boards of education are authorized and empowered to offer and pay rewards in an amount not exceeding three hundred dollars ($300.00) for information leading to the arrest and conviction of any person or persons who willfully deface, damage or destroy property, commit acts of vandalism or commit larceny of the property belonging to the public school system under the jurisdiction of and administered by any county or city board of education. The sums and amounts necessary to pay said rewards shall be an item in the current expense budget of said county or city board of education, and said reward shall be paid out of the current expense fund. (1967, c. 369; 1973, c. 1216.)

Local Modification. — Pitt: 1973, c. 63.

Editor's Note. — The 1973 amendment substituted "three hundred dollars ($300.00)" for "fifty dollars ($50.00)" in the first sentence.

ARTICLE 16.

State Insurance of Public School Property.

§ 115-134. Authority and rules for organization of system. — The State Board of Education is hereby authorized, directed and empowered to establish a division to manage and operate a system of insurance for public school property. The Board shall adopt such rules and regulations as, in its discretion, may be necessary to provide all details inherent in the insurance of public school property. The Board shall employ a director, safety inspectors, engineers and other personnel with suitable training and experience, which in its opinion is necessary to insure and protect effectively public school property, and it shall fix their compensation with the approval of the Personnel Department. (1955, c. 1372, art. 16, s. 1.)

§ 115-135. Public School Insurance Fund; decrease of premiums when fund reaches 5% of total insurance in force. — There shall be set up in the books of the State Treasurer a fund to be known and designated as the "Public School Insurance Fund," which fund hereafter in this Article is referred to as "the fund." In order to provide adequate reserves against losses which may be incurred on account of the risks insured against as provided in this Article and to provide payment for such losses as may be incurred therein, there is hereby appropriated to "the fund" the sum of two million dollars ($2,000,000), which shall be paid from and charged to the State Literary Fund as set up and defined in this Chapter. When the reserves in "the fund" shall be increased by the payment of premiums by the governing boards of county and city administrative school units, or otherwise, to the extent of one million dollars ($1,000,000), there shall be transferred from "the fund" back to the State Literary Fund the sum of one million dollars ($1,000,000) and when "the fund" shall again be increased to the extent of another one million dollars ($1,000,000), there shall be transferred therefrom back to the State Literary Fund an additional sum of one million dollars ($1,000,000) in full reimbursement of the sum of two million dollars ($2,000,000), which is authorized to be transferred from the State Literary Fund by the provisions hereof. All funds paid over to the State Treasurer for premiums on insurance by the governing boards of county and city school administrative units and all money received from interest or from loans and deposits and from any other source connected with the insurance of the property hereinafter referred to shall be held by the State Treasurer in "the fund" for the purpose of paying all fire, lightning, windstorm, hail and explosion losses for which the said fund shall be liable and the expenses necessary for the proper conduct of the insurance of said property, together with such premiums for reinsurance of such part of said insurance as the State Board of Education may deem necessary to reinsure, as provided for in this Article. Such part of the money in "the fund" as may not be needed for the payment of current demands thereon shall be invested by the State Treasurer in such securities as constitute permissible investments for State sinking funds, and all of the earnings thereon shall be paid into "the fund." The State Treasurer shall annually report to the State Board of Education and to the General Assembly the status of "the fund" and a detailed statement of the investments therein and earnings therefrom.

When the fund herein provided for reaches the sum of five percent (5%) of the total insurance in force, then annually thereafter the State Board of Education shall proportionately decrease the premiums on insurance to an amount which will be sufficient to maintain "the fund" at five percent (5%) of the total insurance in force, and in the event in the judgment of the State Board of Education the income from the investments of "the fund" are sufficient to maintain the same at five percent (5%) of the total insurance in force, no premiums shall be charged for the ensuing year, provided that no building or property insured shall cease to pay premiums until five annual payments of premiums have been made whether or not through such payments the fund shall be increased beyond five percent (5%) of the total insurance in force, unless such building or property shall cease to be insurable within the meaning of this Article within such five-year period. (1955, c. 1372, art. 16, s. 2.)

§ 115-136. Insurance of property by school governing boards; notice of election to insure and information to be furnished; outstanding policies. — All county and city boards of education may insure all property within their units against the direct loss or damage by fire, lightning, windstorm, hail or explosions resulting by reason of defects in equipment in public school buildings and other public school properties in "the fund" hereinbefore set up and provided for. Any property covered by an insurance policy in effect on the date when the property of a unit is insured in "the fund" shall be insured by "the fund" as of the

expiration of the policy. Each school governing board shall give notice of its election to insure in "the fund" at least 30 days prior to such insurance becoming effective and shall furnish to the State Board of Education a full and complete list of all outstanding fire insurance policies, giving in complete detail the name of the insurers, the amount of the insurance and expirations thereof. While the said insurance policies remain in effect, "the fund" shall act as coinsurer of the properties covered by such insurance to the same extent and in the same manner as is provided for coinsurance under the provisions of the standard form of fire insurance as provided by law, and in the event of loss shall have the same rights and duties as required by participating insurance companies. (1955, c. 1372, art. 16, s. 3; 1957, c. 686, s. 3.)

§ 115-137. Inspections of insured public school properties. — The State Board of Education shall provide for periodic inspections of all public school properties in the State of North Carolina insured under the provisions hereof, the said inspections for safety of buildings and particularly school buildings, against the loss or damage from fire and explosions. The inspections shall be the basis for offering such engineering advice as may be thought to be necessary to safeguard the children in the public schools from death and injury from school fires or explosions and to protect said school properties from loss, and the local school authorities shall be required so far as possible, and reasonable, to carry out and put into effect such recommendations in respect thereto as may be made by the State Board of Education. (1955, c. 1372, art. 16, s. 4.)

§ 115-138. Information to be furnished prior to insuring in fund; providing for payment of premiums. — County and city boards of education shall at least 30 days before insuring in "the fund," furnish to the State Board of Education a complete and detailed list of all school buildings and contents thereof and other insurable school property, together with an estimate of the present value of the said property. Valuation for purposes of insuring in "the fund" shall be reached by agreement in accordance with the procedure hereinafter set up for adjustment of losses. County and city boards of education and the tax-levying authorities shall be required to provide for the payment of premiums for insurance on the school properties of each unit, respectively, to the extent of not less than seventy-five percent (75%) of the current insurable value of the said properties, including the insurance in fire insurance companies and the insurance provided by "the fund" as set out herein. (1955, c. 1372, art. 16, s. 5.)

§ 115-139. Determination and adjustment of premium rates; certificate as to insurance carried; no lapsation; notice as to premiums required, and payment thereof. — The State Board of Education shall determine the annual premium rate to be charged for insurance of school properties as herein provided, which said rate shall not, however, be in excess of the rates fixed by law for insurance of such properties in effect on May 31, 1948, and such rates shall be adjusted from time to time so as to provide insurance against damage or loss resulting from fires, lightning, windstorm, hail or explosions resulting from defects in equipment in public school buildings and properties for the local school units at the lowest cost possible in keeping with the payment of cost of administration of this Article, and the creation of adequate reserves to pay losses which may be incurred. The State Board of Education shall furnish to each county and city administrative unit annually and, at such times as changes may require, a certificate showing the amount of insurance carried on each item of insurable property. The said insurance shall not lapse but shall remain in force until the county or city board of education requests that said insurance be cancelled or until such property becomes uninsurable in the manner set out in G.S. 115-141. From time to time the local school authorities shall be notified as to the amount of the premiums required to be paid for said insurance and the amounts thereof shall be provided for in the annual budget of such schools. The

tax-levying authorities shall provide by taxation or otherwise a sum sufficient to pay the required premiums thereon.

The local school authorities shall within 30 days from notice thereof pay to the State Board of Education the premiums on such insurance, and in the event that there are no funds on hand at such time with which to make said payment, the same shall be paid out of the first funds available to such school board. Delayed payments shall bear interest at the rate of six percent (6%) per annum. (1955, c. 1372, art. 16, s. 6.)

§ 115-140. Adjustment of losses; determination and report of appraisers; payment of amounts to treasurers of local units; disbursement of funds. — In the event of loss or damage by fire, lightning, windstorm, hail, or explosions resulting from defects in equipment in public school buildings and properties for the local school units, "the fund" shall pay the loss in the same proportion as the amount of insurance carried bore to the valuation of the property at the time it was insured, but not exceeding the amount which it would cost to repair or replace the property with material of like quality within a reasonable time after such loss, not in excess of the amount of insurance provided for said property, and not in excess of the amount of such loss which "the fund" is required to pay in participation with fire insurance companies having policies of insurance in force on said properties at the time of the loss or damage, and "the fund" shall not be liable for a greater proportion of any loss than the amount of insurance thereon shall bear to the whole insurance covering the property against the peril involved.

In the event of loss or damage by fire, lightning, windstorm, hail, or explosions resulting from defects in equipment in public school buildings and properties of the local school units, to the property insured, when an agreement as to the extent of such loss or damage cannot be arrived at between the State Board of Education and the local officials having charge of the said property, the amount of such loss or damage shall be determined by three appraisers; one to be named by the State Board of Education, one by the local governing board having charge of the property, and the two so appointed shall select a third — all of whom shall be disinterested persons, and qualified from experience to appraise and value such property: Provided, however, if the appraisers appointed by the State Board of Education and the local governing board shall fail for 15 days to agree upon the third appraiser, then, on request of the State Board of Education or the local governing board having charge of the property, such third appraiser shall be selected by the resident judge of the superior court of the judicial district in which the property is located. The appraisers so named shall file their written report with the State Board of Education and with the local governing board having such property in charge. The costs of the appraisal shall be paid by "the fund." Upon the determination of the loss by the appraisers, the State Board of Education shall pay the amount of such loss or damage to school property in the control of the county administrative unit to the county treasurer, and pay the amount of loss or damage to property of a city administrative unit to the treasurer of said unit upon proper warrant of the State Board of Education. Said funds shall be paid out by the treasurer of said units, as provided by this Chapter for the disbursement of the funds of such unit. (1955, c. 1372, art. 16, s. 7.)

§ 115-141. Maintenance of inspection and engineering service; cancellation of insurance. — The State Board of Education is authorized and empowered to maintain an inspection and engineering service deemed by it appropriate and necessary to reduce the hazards of fire in public school buildings insured in "the fund" as hereinbefore provided, and to expend for such purpose not in excess of ten percent (10%) of the annual premiums collected from the local school authorities. The State Board of Education is hereby authorized and empowered to cancel any insurance on any school property when, in its opinion,

because of dilapidation and depreciation such property is no longer insurable. Before cancellation, the local school board shall be given at least 30 days' notice, and in the event said property can be restored to insurable condition, the State Board of Education may make such orders with respect to the continuance of such coverage as may be deemed proper: Provided, that the findings and results of the inspection of local school property by the agents of the Board shall be reported to county and city boards of education and to the board of county commissioners of such units as carry insurance with the State 30 days before budget-making time in order that all school property shall be properly taken care of and made safe from fire hazards. (1955, c. 1372, art. 16, s. 8.)

SUBCHAPTER VII. EMPLOYEES.

ARTICLE 17.

Principals' and Teachers' Employment and Contracts.

§ 115-142. System of employment for public school teachers. — (a) Definition of Terms. — As used in this section unless the context requires otherwise:

(1) Repealed by Session Laws 1973, c. 782, s. 1.

(2) "Board" means a city or county board of education.

(3) "Career teacher" means a teacher who has obtained career status as provided in G.S. 115-142(c).

(4) "Committee" means the Professional Review Committee created under G.S. 115-142(g).

(4.1) "Day" means any day except Saturday, Sunday, or a legal holiday. In computing any period of time, the day in which notice is received is not counted, but the last day of the period so computed is to be counted.

(5) "Demote" means to reduce the compensation of a person who is classified or paid by the State Board of Education as a classroom teacher or to transfer him to a new position carrying a lower salary. The word "demote" does not include a reduction in compensation that results from the elimination of a special duty, such as the duty of an athletic coach, assistant principal, or a choral director.

(6) "Probationary teacher" means a certificated person, other than a superintendent, associate superintendent, or assistant superintendent, who has not obtained career-teacher status and whose major responsibility is to teach or to supervise teaching.

(7) Repealed by Session Laws 1973, c. 782, s. 5.

(8) "Superintendent" means the superintendent of schools of a public school system or, in his absence, the person designated to fulfill his functions.

(8.1) "Supervisor" means a person paid on the supervisor's salary schedule who supervises the instructional program in one or more schools and is under the immediate supervision of the superintendent or his designee.

(9) "Teacher" means a person who holds at least a current, not expired, Class A certificate or a regular, not provisional or expired, vocational certificate issued by the State Department of Public Instruction; whose major responsibility is to teach or directly supervise teaching or who is classified by the State Board of Education or is paid as a classroom teacher; and who is employed to fill a full-time, permanent position.

(10) Repealed by Session Laws 1973, c. 782, s. 6.

(b) The superintendent shall maintain in his office a personnel file for each teacher that contains any complaint, commendation, or suggestion for correction or improvement about the teacher. The complaint, commendation, or suggestion shall be signed by the person who makes it and shall be placed in the teacher's

file only after five days' notice to the teacher. Any denial or explanation relating to such complaint, commendation, or suggestion that the teacher desires to make shall be placed in the file.

The personnel file shall be open for the teacher's inspection at all reasonable times but shall be open to other persons only in accordance with such rules and regulations as the board adopts. Any preemployment data or other information obtained about a teacher before his employment by the board may be kept in a file separate from his personnel file and need not be made available to him. No data placed in the preemployment file may be introduced as evidence at a hearing on the dismissal or demotion of a teacher.

(c) (1) Status of Teachers Employed on July 1, 1972. — No teacher may become a career teacher before July 1, 1973. To be eligible to become a career teacher on July 1, 1973, a teacher must have been employed by a North Carolina school system on July 1, 1972, and, at the end of the 1971-72 school year, have either (i) been employed by that school system (or successor school system if the system has been consolidated) for four consecutive years, or (ii) been employed in a North Carolina public school system for five consecutive years. Notwithstanding the requirement that the period of employment must be consecutive, a board may waive this requirement if the teacher has taught in its school system for a total of four years at the end of the 1971-72 school year and if, in the board's opinion, there was good reason why the service was not consecutive. A teacher who satisfies these requirements shall automatically become a career teacher on July 1, 1973, if he taught in that school system during the 1972-73 school year and was reemployed for the 1973-74 school year. All other teachers are probationary teachers.

(2) Normal Election of a Teacher to Career Status. — When a teacher will have been employed by a North Carolina public school system for three consecutive years, the board, near the end of the third year, shall vote upon his employment for the next school year. The board shall give him written notice of that decision at least 30 days before the end of his third year of employment. If a majority of the board votes to reemploy him, he becomes a career teacher on the first day of the fourth year of employment. If the board votes to reemploy the teacher and thus grant career status at the beginning of the next school year, and if it has notified him of this decision, it may not later rescind that action but must proceed under the provisions of this section for the demotion or discharge of a teacher if it decides to terminate his employment.

If a majority of the board votes against reemploying the teacher, he shall not teach beyond the current school term. If the board fails to vote on granting career status but reemploys him for the next year, he automatically becomes a career teacher on the first day of the fourth year of employment.

A year, for purposes of computing time as a probationary teacher, shall be not less than 120 workdays performed as a full-time, permanent teacher in a normal school year.

(3) Employment of a Career Teacher. — A teacher who has obtained career status in another North Carolina public school system need not serve another probationary period of more than two years, and may, at the option of the board, be employed immediately as a career teacher. In any event, if the teacher is reemployed for a third consecutive year, he shall automatically become a career teacher. A teacher with career status who resigns and within five years seeks to be reemployed by the same school system need not serve another probationary period of more than one year and may, at the option of the board, be reemployed as

a career teacher. In any event, if he is reemployed for a second consecutive year, he shall automatically become a career teacher.

(4) Ineligible for Career Status. — No superintendent, associate superintendent, assistant superintendent or other school employee who is not a teacher as defined by G.S. 115-142(a)(9) is eligible to obtain career status or continue in a career status if he no longer performs the responsibilities of a teacher as defined in G.S. 115-142(a)(9).

(5) Leaves of Absence. — A career teacher who has been granted a leave of absence by a board shall maintain his career status if he returns to his teaching position at the end of the authorized leave.

(d) Career Teachers. —

(1) A career teacher shall not be subjected to the requirement of annual appointment nor shall he or she be dismissed, demoted, or employed on a part-time basis without his or her consent except as provided in subsection (e).

(2) A career teacher who has performed the duties of a principal or supervisor in a particular position in the school system for three consecutive years shall not be transferred from that position to a lower-paying administrative position or to a lower-paying nonadministrative position without his consent except for the reasons given in G.S. 115-142(e) and in accordance with the procedure for the dismissal of a career teacher set out in this section.

(e) Grounds for Dismissal or Demotion of a Career Teacher. —

(1) No career teacher shall be dismissed or demoted or employed on a part-time basis except for:

a. Inadequate performance;
b. Immorality;
c. Insubordination;
d. Neglect of duty;
e. Physical or mental incapacity;
f. Habitual or excessive use of alcohol or nonmedical use of a controlled substance as defined in Article 5 of Chapter 90 of the General Statutes.
g. Conviction of a felony or a crime involving moral turpitude;
h. Advocating the overthrow of the government of the United States or of the State of North Carolina by force, violence, or other unlawful means;
i. Failure to fulfill the duties and responsibilities imposed upon teachers by the General Statutes of this State;
j. Failure to comply with such reasonable requirements as the board may prescribe;
k. Any cause which constitutes grounds for the revocation of such career teacher's teaching certificate; or
l. A justifiable decrease in the number of positions due to district reorganization or decreased enrollment, provided that subdivision (2) is complied with.
m. Failure to maintain one's certificate in a current status.

(2) When a career teacher is dismissed pursuant to G.S. 115-142(e)(1)l above, his or her name shall be placed on a list of available teachers to be maintained by the board. Career teachers whose names are placed on such a list shall have a priority on all positions for which they are qualified which become available in that system for the three consecutive years succeeding their dismissal. However, if the school system offers the dismissed teacher a position for which he is certified and he refuses it, his name shall be removed from the priority list.

(3) In determining whether the professional performance of a career teacher is adequate, consideration shall be given to regular and special evaluation reports prepared in accordance with the published policy of the employing school system and to any published standards of performance which shall have been adopted by the board. Failure to notify a career teacher of an inadequacy in his or her performance shall be conclusive evidence of satisfactory performance.

(4) Dismissal under subdivision (1) above, except paragraph g thereof, shall not be based on conduct or actions which occurred more than three years before the written notice of the superintendent's intention to recommend dismissal is mailed to the teacher.

(f) Suspension without Pay. — If a board believes that cause exists for dismissing a probationary or career teacher for any reason specified in G.S. 115-142(e)(1)b through 115-142(e)(1)h and that immediate suspension of the teacher is necessary, the board may by resolution suspend him without pay and without giving notice and a hearing.

If a board thinks a probationary or career teacher's performance is so inadequate that an emergency situation exists requiring the teacher to be removed immediately from his duties, the board shall give him written notice that it plans to suspend him and the reasons for the planned action. Not less than two or more than five days after the teacher receives the board's notice, the board shall hold a hearing on whether it should suspend the teacher. The hearing procedures provided in G.S. 115-142(j) shall be followed and all teacher evaluations and other information in the teacher's personnel file shall be made available to the board. If the board finds it necessary to suspend the teacher, it may by resolution suspend him without pay.

Within five days after a suspension under this section, the superintendent shall initiate a dismissal as provided in this section. If it is finally determined that no grounds for dismissal exist, the teacher shall be reinstated immediately and shall be paid for the period of suspension.

(g) Professional Review Committee; Qualifications; Term; Vacancy; Training. —

(1) There is hereby created a Professional Review Committee which shall consist of 121 citizens, 11 from each of the State's congressional districts, five of whom shall be lay persons and six of whom shall have been actively and continuously engaged in teaching or in supervision or administration of schools in this State for the five years preceding their appointment and who are broadly representative of the profession, to be appointed by the Superintendent of Public Instruction with the advice and consent of the State Board of Education. Each member shall be appointed for a term of three years except that the first appointments shall be made as follows: 40 members to serve for a one-year term; 40 members to serve a two-year term; and 41 members to serve a three-year term. The Superintendent of Public Instruction, with the advice and consent of the State Board of Education, shall fill any vacancy which may occur in the Committee. The person appointed to fill a vacancy shall serve for the unexpired portion of the term of the member of the Committee whom he is appointed to replace.

(2) The Superintendent of Public Instruction shall provide for the Committee such training as he considers necessary or desirable for the purpose of enabling the members of the Committee to perform the functions required of them.

(3) The compensation of committee members while serving as a member of a hearing panel shall be as for State boards and commissions pursuant to G.S. 138-5. The compensation shall be paid by the State Board of Education.

(h) Procedure for Dismissal or Demotion of Career Teacher. —

(1) A career teacher may not be dismissed, demoted, or reduced to part-time employment except upon the superintendent's recommendation.

(2) Before recommending to a board the dismissal or demotion of the career teacher, the superintendent shall give written notice to the career teacher by certified mail of his intention to make such recommendation and shall set forth as part of his recommendation the grounds upon which he believes such dismissal is justified. The notice shall include a statement to the effect that if the teacher within 15 days after the date of receipt of the notice requests a review, he shall be entitled to have the proposed recommendations of the superintendent reviewed by a panel of the Committee. A copy of G.S. 115-142 and a current list of the members of the Professional Review Committee shall also be sent to the career teacher. If the teacher does not request a panel hearing within the 15 days provided, the superintendent may submit his recommendation to the board.

(3) Within the 15-day period after receipt of the notice, the career teacher may file with the superintendent a written request for either (i) a review of the superintendent's proposed recommendation by a panel of the Professional Review Committee or (ii) a hearing before the board within 10 days. If the teacher requests an immediate hearing before the board, he forfeits his right to a hearing by a panel of the Professional Review Committee. If no request is made within that period, the superintendent may file his recommendation with the board. The board, if it sees fit, may by resolution dismiss such teacher. If a request for review is made, the superintendent shall not file his recommendation for dismissal with the board until a report of a panel of the Committee is filed with the superintendent.

(4) If a request for review is made, the superintendent, within five days of filing such request for review, shall notify the Superintendent of Public Instruction who, within seven days from the time of receipt of such notice, shall designate a panel of five members of the Committee (at least two of whom shall be lay persons) who shall not be employed in or be residents of the county in which the request for review is made, to review the proposed recommendations of the superintendent for the purpose of determining whether in its opinion the grounds for the recommendation are true and substantiated. The teacher or principal making the request for review shall have the right to require that at least two members of the panel shall be members of his professional peer group.

(i) Investigation by Panel of Professional Review Committee; Report; Action of Superintendent; Review by Board. —

(1) The career teacher and superintendent will each have the right to designate not more than 30 of the 121 members of the Professional Review Committee as not acceptable to the teacher or superintendent respectively. No person so designated shall be appointed to the panel. The career teacher shall specify those Committee members who are not acceptable in his request for a review of the superintendent's proposed recommendations provided for in subdivision (h)(3) above. The superintendent's notice to the Superintendent of Public Instructions provided for in subdivision (h)(4) above shall contain a list of those members of the committee not acceptable to the superintendent and the teacher respectively. Failure to designate nonacceptable members in accordance with this subsection shall constitute a waiver of that right.

(2) As soon as possible after the time of its designation, the panel shall elect a chairman and shall conduct such investigation as it may consider

necessary for the purpose of determining whether the grounds for the recommendation are true and substantiated. The panel shall be furnished assistance reasonably required to conduct its investigation and shall be empowered to subpoena and swear witnesses and to require them to give testimony and to produce books and papers relevant to its investigation.

(3) The career teacher and superintendent involved shall each have the right to meet with the panel accompanied by counsel or other person of his choice and to present any evidence and arguments which he considers pertinent to the considerations of the panel and to cross-examine witnesses.

(4) When the panel has completed its investigation, it shall prepare a written report and send it to the superintendent and teacher. The report shall contain an outline of the scope of its investigation and its finding as to whether or not the grounds for the recommendation of the superintendent are true and substantiated. The panel shall complete its investigation and prepare the report within 20 days from the time of its designation, except in cases in which the panel finds that justice requires that a greater time be spent in connection with the investigation and the preparation of such report, and reports that finding to the superintendent and the teacher, provided that such extension does not exceed 10 days.

(5) Within five days after the superintendent receives the report of the panel, he shall submit his written recommendation for dismissal to the board with a copy to the teacher, or shall drop the charges against the teacher. His recommendation shall state the grounds for the recommendation and shall be accompanied by a copy of the report of the panel of the Committee.

(6) Within seven days after receiving the superintendent's recommendation and before taking any formal action, the board shall notify the teacher by certified mail that it has received the superintendent's recommendation and the report of the panel. The notice shall state that if the teacher requests a hearing before the board on the superintendent's recommendation, a hearing will be provided at the time and place specified in the notice. The time specified shall not be sooner than seven or later than 20 days after the teacher received the notice. The notice shall further state that if the board does not receive the teacher's written notification that he wants a hearing before the board, such notice to be given within five days after he has received the board's notice, it may by resolution dismiss the teacher. If the teacher can show that his request for a hearing was postmarked within the time provided, his right to a hearing is not forfeited.

(j) Hearing Procedure. — The following provisions shall be applicable to any hearing conducted pursuant to G.S. 115-142(k) or (l).

(1) The hearing shall be private.

(2) The hearing shall be conducted in accordance with such reasonable rules and regulations as the board may adopt consistent with G.S. 115-142, or if no rules have been adopted, in accordance with reasonable rules and regulations adopted by the State Board of Education to govern such hearings.

(3) At the hearing the teacher and superintendent shall have the right to be present and to be heard, to be represented by counsel and to present through witnesses any competent testimony relevant to the issue of whether grounds for dismissal or demotion exist or whether the procedures set forth in G.S. 115-142 have been followed.

(k) Panel Finds Grounds for Superintendent's Recommendation True and Substantiated. —

(1) If the panel found that the grounds for the recommendation of the superintendent are true and substantiated, at the hearing the board shall consider the recommendation of the superintendent, the report of the panel, including any minority report, and any evidence which the teacher or the superintendent may wish to present with respect to the question of whether the grounds for the recommendation are true and substantiated. The hearing may be conducted in an informal manner.

(2) If, after considering the recommendation of the superintendent, the report of the panel and the evidence adduced at the hearing, the board concludes that the grounds for the recommendation are true and substantiated, the board, if it sees fit, may by resolution order such dismissal.

(l) Panel Does Not Find That the Grounds for Superintendent's Recommendation Are True and Substantiated. —

(1) If the panel does not find that the grounds for the recommendation of the superintendent are true and substantiated, at the hearing the board shall determine whether the grounds for the recommendation of the superintendent are true and substantiated upon the basis of competent evidence adduced at the hearing by witnesses who shall testify under oath or affirmation to be administered by any board member or the secretary of the board.

(2) The procedure at the hearing shall be such as to permit and secure a full, fair and orderly hearing and to permit all relevant competent evidence to be received therein. The report of the panel of the committee shall be deemed to be competent evidence. A full record shall be kept of all evidence taken or offered at such hearing. Both counsel for the system and the career teacher or his counsel shall have the right to cross-examine witnesses.

(3) At the request of either the superintendent or the teacher, the board shall issue subpoenas requiring the production of papers or records or the attendance of persons residing within the State before the board. Subpoenas for witnesses to testify at the hearing in support of the recommendation of the superintendent or on behalf of the career teacher shall, as requested, be issued in blank by the board over the signature of its chairman or secretary. The board shall pay witness fees for up to five witnesses subpoenaed on behalf of the teacher, except that it shall not pay for any witness who resides within the county in which the dismissal originates or who is an employee of the board. However, no employee of the board shall suffer any loss of compensation because he has been subpoenaed to testify at the hearing. These payments shall be as provided for witnesses in G.S. 7A-314.

(4) At the conclusion of the hearing provided in this section, the board shall render its decision on the evidence submitted at such hearing and not otherwise.

(5) Within five days following the hearing, the board shall send a written copy of its findings and order to the teacher and superintendent. The board shall provide for making a transcript of its hearing. If the teacher contemplates an appeal to a court of law, he may request and shall receive at no charge a transcript of the proceedings.

(m) Probationary Teacher. —

(1) The board of any public school system may not discharge a probationary teacher during the school year except for the reasons for and by the procedures by which a career teacher may be dismissed as set forth in subsections (e) and (h) to (l) above.

(2) The board, upon recommendation of the superintendent, may refuse to renew the contract of any probationary teacher or to reemploy any teacher who is not under contract for any cause it deems sufficient; provided, however, that the cause may not be arbitrary, capricious, discriminatory or for personal or political reasons.

(n) Appeal. — Any teacher who has been terminated by action of the board after a hearing pursuant to subsections (k) or (l) shall have the right to appeal from the decision of the board to the superior court for the judicial district in which the teacher is employed. The appeal shall be filed within a period of 30 days after notification of the decision of the board. The cost of preparing the transcript shall be borne by the board.

(o) A teacher, career or probationary, should not resign without the consent of the superintendent unless he has given at least 30 days' notice. If the teacher does resign without giving at least 30 days' notice, the board may request that the State Board of Education revoke the teacher's certificate for the remainder of that school year. A copy of the request shall be placed in the teacher's personnel file.

A probationary teacher whose contract will not be renewed for the next school year shall be notified of this fact not less than 30 days before the end of his employment period.

(p) Notwithstanding any law or regulation to the contrary and the teachers' salary schedule as adopted by the State Board of Education, this section shall apply to all persons defined as teachers by this section who serve as teachers in the following schools and institutions:

Cameron Morrison.
Samuel Leonard.
Richard T. Fountain.
Juvenile Evaluation Center.
C. A. Dillon.
Dobbs School for Girls.
Samarkand Manor.
Stonewall Jackson. (1955, c. 664; 1967, c. 223, s. 1; 1971, c. 883; c. 1188, s. 2; 1973, c. 315, s. 1; c. 782, ss. 1-30.)

Cross Reference. — As to salaries of teachers and principals in the institutions listed in subsection (p) of this section, see § 115-157.1.

Editor's Note. — The first 1973 amendment added subsection (p).

The second 1973 amendment, in subsection (a), repealed subdivisions (1), defining "administrator," (7), defining "substitute teacher," and (10), defining "temporary teacher," rewrote subdivisions (3), (5) and (6) and added subdivisions (4.1) and (8.1). The amendment rewrote subsections (b) and (c), subdivision (2) of subsection (d), and subsection (f). In subsection (e), the amendment inserted "or employed on a part-time basis" in the introductory paragraph of subdivision (1), rewrote paragraph f and added paragraph m of subdivision (1), and added the last sentence of subdivision (2). In subsection (g), the amendment added the second sentence of subdivision (3). In subsection (h), the amendment rewrote subdivision (1), deleted "At least 20 days" at the beginning of the first sentence and added the last sentence of subdivision (2), rewrote the former first sentence of subdivision (3) as the present first and second sentences and substituted "seven" for "10" in the first sentence of subdivision (4). In subsection (i), the amendment substituted "30" for "40" in the first sentence of subdivision (1), added "and teacher" to the first sentence and substituted "20" for "30" and "10" for "60" in the last sentence of subdivision (4), substituted "five" for "30" and inserted "with a copy to the teacher" in the first sentence of subdivision (5) and rewrote subdivision (6). In subsection (j), the amendment deleted, at the end of subdivision (1), "unless the career teacher or the superintendent requests a public hearing" and substituted "teacher and superintendent" for "career teacher" near the beginning of subdivision (3). In subsection (k) the amendment inserted "or the superintendent" following "teacher" in the first sentence of subdivision (1). In subsection (l) the amendment rewrote the first sentence of subdivision (3), rewrote the former third sentence of subdivision (3) as the present third and fourth sentences, and rewrote subdivision (5). The amendment also rewrote subsection (o).

For note on racial discrimination in teacher hiring and firing, see 45 N.C.L. Rev. 166 (1966),

commenting on Wheeler v. Durham City Bd. of Educ., 363 F.2d 738 (4th Cir. 1966) and Chambers v. Hendersonville City Bd. of Educ., 364 F.2d 189 (4th Cir. 1966).

Section prior to July 1, 1972, Construed. — See Johnson v. Branch, 242 F. Supp. 721 (E.D.N.C. 1965), rev'd on other grounds, 364 F.2d 177 (4th Cir. 1966); Wall v. Stanly County Bd. of Educ., 259 F. Supp. 238 (M.D.N.C. 1966), rev'd on other grounds, 378 F.2d 275 (4th Cir. 1967); North Carolina Teachers Ass'n v. Asheboro City Bd. of Educ., 393 F.2d 736 (4th Cir. 1968); Still v. Lance, 279 N.C. 254, 182 S.E.2d 403 (1971); James v. Beaufort County Bd. of Educ., 348 F. Supp. 711 (E.D.N.C. 1971), aff'd, 465 F.2d 477 (4th Cir. 1972); Cannady v. Person County Bd. of Educ., 375 F. Supp. 689 (M.D.N.C. 1974).

Applicability of Section. — Section is applicable only to teachers (other than those with regular vocational rehabilitation teaching certificates) holding at least an A certificate. Opinion of Attorney General to Mr. William A. Dees, Jr., 41 N.C.A.G. 845 (1972).

Section Provides Greater Security. — Tenure in employment has long been a laudable objective of the teaching profession, and this section provides teachers with much greater security than they have heretofore had. Taylor v. Crisp, 21 N.C. App. 359, 205 S.E.2d 102 (1974).

It Does Not Grant Instant Career Status. — Since this section confers upon career teachers additional security in their employment, it does not grant instant career status to all teachers presently employed but provides appropriate methods through which a teacher may acquire career status. Taylor v. Crisp, 21 N.C. App. 359, 205 S.E.2d 102 (1974).

The File Referred to in Subsection (b) Must Contain Certain Items but Is Not Limited in What the File May Contain. — See opinion of Attorney General to Mr. William A. Dees, 41 N.C.A.G. 782 (1972).

All teachers when considered for reemployment for school year of 1973-74 were probationary teachers. Taylor v. Crisp, 21 N.C. App. 359, 205 S.E.2d 102 (1974).

Under subsection (c) a teacher or principal who had taught for more than three years prior to 1972-73 and was teaching during the 1972-73 school year was to be treated the same way as a teacher completing his third year in 1972-73. Such a teacher would be voted on by the board of education at the end of the 1972-73 school year and, if rehired for 1973-74, would then become a career teacher. Taylor v. Crisp, 21 N.C. App. 359, 205 S.E.2d 102 (1974).

Subsection (c) concerns election of probationary teacher to career status after eligibility period of service is met. Taylor v. Crisp, 21 N.C. App. 359, 205 S.E.2d 102 (1974).

And Requires Vote of Board. — Subsection (c) requires the vote of the board of education upon employment of a probationary teacher for the next school year. It does not provide for any recommendation or participation of the superintendent in this action. Taylor v. Crisp, 21 N.C. App. 359, 205 S.E.2d 102 (1974).

Under subsection (c) the board of education shall vote upon the continued employment of a probationary teacher when such reemployment has the effect of granting career status. This is not simply a matter of renewing the contract of a probationary teacher who will again be considered before being granted career status. The board of education is reaching a decision which confers career status, and the legislature has determined under subsection (c) that this decision shall be made by the elected board, which has ultimate "control and supervision of all matters pertaining to the public schools." Taylor v. Crisp, 21 N.C. App. 359, 205 S.E.2d 102 (1974).

Which Was Not Required to Consider Superintendent's Recommendation. — The board was not required to consider the recommendation of a superintendent that a principal be rehired for the school year 1973-74, but was free to refuse to rehire him as it chose. Taylor v. Crisp, 21 N.C. App. 359, 205 S.E.2d 102 (1974).

When Teacher Entitled to Credit for Previous Employment. — Unless, at the end of the last school year preceding July 1, 1972, the teacher has had at least four consecutive years' employment with the school system considering him for tenure, or unless that teacher has had at least five consecutive years' employment with any of the public school systems of this State, that teacher is entitled to no credit for his previous employment in determining his eligibility for career teaching status. Opinion of Attorney General to Mr. W.F. Womble, 42 N.C.A.G. 61 (1972).

Subsection (m)(2) concerns renewal of contract of probationary teacher without reference to career status and does involve the recommendation of the superintendent. Taylor v. Crisp, 21 N.C. App. 359, 205 S.E.2d 102 (1974).

It is applicable to those teachers who are serving the first and second years of their probationary period when they are not then eligible to be considered for career status. Taylor v. Crisp, 21 N.C. App. 359, 205 S.E.2d 102 (1974).

Right to Hearing. — Where a local school board determined not to renew the contract of a teacher who did not have tenure nor any "equivalent of tenure," he was not entitled to a full due-process adversary hearing. Williams v. Hyde County Bd. of Educ., 490 F.2d 1231 (4th Cir. 1974).

When Contract Binding. — As to when teachers' contracts became binding obligations of county commissioners under former law, see Hampton v. Board of Educ., 195 N.C. 213, 141 S.E. 744 (1928).

Stated in Johnson v. Gray, 263 N.C. 507, 139 S.E.2d 551 (1965).

Cited in Horton v. Orange County Bd. of Educ., 342 F. Supp. 1244 (M.D.N.C. 1971).

§§ 115-142.1, 115-142.2: Repealed by Session Laws 1973, c. 647, ss. 3, 4.

§ 115-142.3. Procedure for reducing employment term of any occupational education teacher. — The following procedures shall be complied with before any city or county board of education may take any action reducing the term of employment of any occupational education teacher:

(1) At least 60 calendar days prior to the beginning date of any reduction in the term of employment, the board shall give written notice to the occupational education teacher of its intentions and reasons for the proposed action.

(2) Within 15 calendar days of receipt of this written notice, the occupational education teacher may request a hearing before the board. The board shall conduct such hearing within 20 calendar days of receipt of the request with the occupational education teacher being given at least 10 calendar days' notice of the date of hearing.

(3) At the hearing, the occupational education teacher may be accompanied by a representative of his choice and may present such witnesses and other evidence as he may wish in order to show that a reduction in his term of employment is unjustified or arbitrary.

(4) After the hearing, the board shall make its decision and notify the occupational education teacher in writing.

(5) Any occupational education teacher whose term of employment has been reduced by the board pursuant to this section shall have the right to appeal from the decision of the board to the superior court for the judicial district in which the occupational education teacher is employed. The appeal shall be filed within a period of 30 calendar days after notification of the decision of the board.

The board shall advise the Division of Occupational Education of the Department of Public Instruction of its intention to reduce the term of employment of an occupational education teacher at least 90 calendar days prior to the effective date of reduction in his term of employment. (1973, c. 780, s. 1.)

§ 115-143. Health certificate required for teachers and other school personnel. — Any person serving as county superintendent, city superintendent, supervisor, district principal, building principal, teacher, or any other employee in the public schools of the State, shall file in the office of the county or city superintendent each year, before assuming his or her duties, a certificate from the county physician, local health director, or other reputable physician, certifying that the said person does not have tuberculosis in the communicable form, or other communicable disease, or any disease, physical or mental, which would impair the ability of the said person to perform effectively his or her duties.

The examining physician shall make the aforesaid certificate on an examination form supplied by the State Superintendent of Public Instruction. The certificate shall be issued only after a physical examination has been made at the time of the certification, and such examination shall be in accordance with rules and regulations adopted by the State Superintendent of Public Instruction, with approval of the Secretary of Human Resources, and such rules and regulations may include the requirement of an X-ray chest examination.

It shall be the duty of the county or city superintendent of the school in which the person is employed to enforce the provisions of this section.

Any person violating any of the provisions of this section shall be guilty of a misdemeanor and subject to a fine or imprisonment in the discretion of the court. (1955, c. 1372, art. 17, s. 1; 1957, c. 1357, ss. 2, 14; 1973, c. 476, s. 128.)

Editor's Note. — The 1973 amendment substituted "Secretary of Human Resources" for "State Health Director."

Opinions of Attorney General. — Mr. Harry C. Corbin, Superintendent, Transylvania County Schools, 40 N.C.A.G. 273 (1969).

§§ 115-144, 115-145: Repealed by Session Laws 1971, c. 883.

§ 115-146. Duties of teachers generally; principals and teachers may use reasonable force in exercising lawful authority. — It shall be the duty of all teachers, including student teachers, substitute teachers, voluntary teachers, teachers' aides and assistants when given authority over some part of the school program by the principal or supervising teacher, to maintain good order and discipline in their respective schools; to encourage temperance, morality, industry, and neatness; to promote the health of all pupils, especially of children in the first three grades, by providing frequent periods of recreation, to supervise the play activities during recess, and to encourage wholesome exercises for all children; to teach as thoroughly as they are able all branches which they are required to teach; to provide for singing in the school, and so far as possible to give instruction in the public school music; and to enter actively into the plans of the superintendent for the professional growth of the teachers. Teachers shall cooperate with the principal in ascertaining the cause of nonattendance of pupils that he may report all violators of the compulsory attendance law to the attendance officer in accordance with rules promulgated by the State Board of Education.

Principals, teachers, substitute teachers, voluntary teachers, teachers' aides and assistants and student teachers in the public schools of this State may use reasonable force in the exercise of lawful authority to restrain or correct pupils and maintain order. No county or city board of education or district committee shall promulgate or continue in effect a rule, regulation or bylaw which prohibits the use of such force as is specified in this section. (1955, c. 1372, art. 17, s. 4; 1959, c. 1016; 1969, c. 638, ss. 2, 3; 1971, c. 434.)

School officials do not possess absolute authority over their students. Givens v. Poe, 346 F. Supp. 202 (W.D.N.C. 1972).

Students Possess Fundamental Rights. — Students in school as well as out of school are "persons" under the North Carolina Constitution, possessed of fundamental rights which the State must respect. Givens v. Poe, 346 F. Supp. 202 (W.D.N.C. 1972).

§ 115-147. Power to suspend or dismiss pupils. — The principal of a school shall have authority to suspend or dismiss any pupil who willfully and persistently violates the rules of the school or who may be guilty of immoral or disreputable conduct, or who may be a menace to the school: Provided, any suspension or dismissal in excess of 10 school days and any suspension or dismissal denying a pupil the right to attend school during the last 10 school days of the school year shall be subject to the approval of the county or city superintendent: Provided further, any student who is suspended or dismissed more than once during the same school term shall be subject to permanent dismissal more than once during the same school term shall be subject to permanent dismissal for the remainder of the school term at the discretion of the principal, with the approval of the superintendent. In the absence of an abuse of discretion, the decision of the principal, with the approval of the superintendent, shall be final. Every suspension or dismissal for cause shall be reported at once to the superintendent and to the attendance counselor, who shall investigate the cause and deal with the offender in accordance with rules governing the attendance of children in school. (1955, c. 1372, art. 17, s. 5; 1959, c. 573, s. 12; 1963, c. 1223, s. 5; 1965, c. 584, s. 14; 1971, c. 1158.)

School officials do not possess absolute authority over their students. Givens v. Poe, 346 F. Supp. 202 (W.D.N.C. 1972).

Students Possess Fundamental Rights. — Students in school as well as out of school are "persons" under the North Carolina Constitution, possessed of fundamental rights which the State must respect. Givens v. Poe, 346 F. Supp. 202 (W.D.N.C. 1972).

Extended suspension or exclusion from school deprives a student of important rights and liberties. Givens v. Poe, 346 F. Supp. 202 (W.D.N.C. 1972).

Due-Process Requirements for Prolonged Suspension. — Where exclusion or suspension for any considerable period of time is a possible consequence of proceedings, due process requires a number of procedural safeguards to students such as: (1) notice to parents and student in the form of a written and specific statement of the charges which, if proved, would justify the punishment sought; (2) a full hearing after adequate notice; (3) which hearing is conducted by an impartial tribunal; (4) the right to examine exhibits and other evidence against the student; (5) the right to be represented by counsel (though not at public expense); (6) the right to confront and examine adverse witnesses; (7) the right to present evidence on behalf of the student; (8) the right to make a record of the proceedings; and, (9) the requirement that the decision of the authorities be based upon substantial evidence. Givens v. Poe, 346 F. Supp. 202 (W.D.N.C. 1972).

Challenge to Constitutionality on Ground That Section Was Applied Discriminatorily. — Where challenge to this section on grounds that it was applied discriminatorily and without procedural due process was an attack on lawless exercise of authority in particular cases and not an attack upon the statute conferring the authority, these issues were appropriate for determination by a single district judge, and a three-judge panel declined to adjudicate them. Webster v. Perry, 367 F. Supp. 666 (M.D.N.C. 1973).

Right to Equivalent Free Educational Opportunities. — Students expelled pursuant to the authority of this section may be entitled to either reinstatement or to equivalent free educational opportunities in a more suitable environment. Webster v. Perry, 367 F. Supp. 666 (M.D.N.C. 1973).

Prohibition of Printed Matter Distribution Was Prior Restraint. — A school rule which prohibited pupils from distributing any printed material without the express permission of the principal was held to be an invalid attempt at prior restraint because it lacked any criteria to be followed by the school authorities in determining whether to grant or deny permission, and any procedural safeguards in the form of an expeditious review procedure of the decision of the school authorities. Quarterman v. Byrd, 453 F.2d 54 (4th Cir. 1971).

§ 115-148. Duty to make reports to superintendent; making false reports or records. — Every principal or teacher of a public school shall make such reports as are required by the boards of education, and the superintendent shall not approve the vouchers for the pay of principals or teachers until the required monthly and annual reports are made: Provided, that the superintendents may require teachers to make reports to the principals and principals to make reports to the superintendent: Provided further, that any superintendent, principal, teacher or other school employee of the public schools, who knowingly and willfully makes or procures another to make any false report or records, requisitions, or payrolls, respecting daily attendance of pupils in the public schools, payroll data sheets, or other reports required to be made to any board or officer in the performance of their [his] duties, shall be guilty of a misdemeanor and upon conviction shall be fined or imprisoned in the discretion of the court and the certificate of such person to teach in the public schools of North Carolina shall be revoked by the State Superintendent of Public Instruction.

When the governing board of any county or city administrative school unit shall have information that inaccurate school attendance records are being kept, the board concerned shall immediately investigate such inaccuracies and take necessary action to establish and maintain correct records and report its findings and action to the State Board of Education.

When it shall be found by the State Board of Education that inaccurate attendance records have been filed with the State Board of Education which resulted in an excess allotment of funds for teachers' salaries in any school unit in any school year, the school unit concerned may be required to refund to the

State Board the amount allotted to said unit in excess of the amount an accurate attendance record would have justified. (1955, c. 1372, art. 17, s. 6; 1959, c. 1294.)

Principal's Duty to Keep Superintendent and Board Informed. — It is the duty of the principal to keep the superintendent and, through the superintendent, the board of education, informed about all phases of school operations. Johnson v. Gray, 263 N.C. 507, 139 S.E.2d 551 (1965).

Reports Qualifiedly Privileged. — The reports a principal makes in the performance of his duties are qualifiedly privileged. Johnson v. Gray, 263 N.C. 507, 139 S.E.2d 551 (1965).

§ 115-149. Care of school building. — It shall be the duty of every teacher and principal in charge of school buildings to instruct the children in the proper care of public property, and it is their duty to exercise due care in the protection of school property against damage, either by defacement of the walls and doors or any breakage on the part of the pupils, and if they shall fail to exercise a reasonable care in the protection of property during the day, they may be held financially responsible for all such damage, and if the damage is due to carelessness or negligence on the part of the teachers or principal, the superintendent may hold those in charge of the building responsible for the damage, and if it is not repaired before the close of a term, a sufficient amount may be deducted from their final vouchers to repair the damage for which they are responsible.

If any child in school shall carelessly or willfully damage school property, the teacher or principal shall report the damage to the parent, and if the parent refuses to pay the cost of repairing the same, the teacher or principal shall report the offense to the superintendent of schools.

It shall be the duty of all principals to report immediately to their respective superintendents any unsanitary condition, damage to school property or needed repair. (1955, c. 1372, art. 17, s. 7.)

§ 115-150. Authority and duty of principal generally. — The principal shall have authority to grade and classify pupils and exercise discipline over the pupils of the school. The principal shall make all reports to the county or city superintendent and give suggestions to teachers for the improvement of instruction. It shall be the duty of each teacher in a school to cooperate with the principal in every way possible to promote good teaching in the school and a progressive community spirit among its patrons.

It shall be the duty of the principal to conduct a fire drill during the first week after the opening of school and thereafter at least one fire drill each school month, in each building in his charge, where children are assembled. Fire drills shall include all pupils and school employees, and the use of various ways of egress to simulate evacuation of said buildings under various conditions, and such other regulations as shall be prescribed for fire safety by the Commissioner of Insurance, the Superintendent of Public Instruction and the State Board of Education. A copy of such regulations shall be kept posted on the bulletin board in each building.

It shall be the duty of each principal to inspect each of the buildings in his charge at least twice each month during the regular school session. This inspection shall include cafeterias, gymnasiums, boiler rooms, storage rooms, auditoriums and stage area[s] as well as all class rooms. This inspection shall be for the purpose of keeping the buildings safe from the accumulation of trash and other fire hazards.

It shall be the duty of the principal to file a written report once each month during the regular school session with his local school committee, and two copies of this report with the superintendent of his administrative unit, one copy of which shall be transmitted by the superintendent to the chairman of the county

or city board of education. This report shall state the date the last fire drill was held, the time consumed in evacuating each building, that the inspection has been made as prescribed by law and such other information as is deemed necessary for fire safety by the Commissioner of Insurance, the Superintendent of Public Instruction and the State Board of Education. (1955, c. 1372, art. 17, s. 8; 1957, c. 843; 1959, c. 573, s. 13; 1965, c. 584, s. 15.)

School officials do not possess absolute authority over their students. Givens v. Poe, 346 F. Supp. 202 (W.D.N.C. 1972).

Students Possess Fundamental Rights. — Students in school as well as out of school are "persons" under the North Carolina Constitution, possessed of fundamental rights which the State must respect. Givens v. Poe, 346 F. Supp. 202 (W.D.N.C. 1972).

Stated in Johnson v. Gray, 263 N.C. 507, 139 S.E.2d 551 (1965).

§ 115-150.1. Duty of principal regarding fire hazards. — The principal of every public school in the State shall have the following duties regarding fire hazards during periods when he is in control of a school:

(1) Every principal shall make certain that all corridors, halls, and tower stairways which are used for exits shall always be kept clear and that nothing shall be permitted to be stored or kept in corridors or halls, or in, on or under stairways that could in any way interfere with the orderly exodus of occupants. The principal shall make certain that all doors used for exits shall be kept in good working condition. During the occupancy of the building or any portion thereof by the public or for school purposes, the principal shall make certain that all doors necessary for prompt and orderly exodus of the occupants are kept unlocked.

(2) Every principal shall make certain that no electrical wiring shall be installed within any school building or structure or upon the premises and that no alteration or addition shall be made in any existing wiring, except with the authorization of the superintendent. Any such work shall be performed by a licensed electrical contractor, or by a maintenance electrician regularly employed by the board of education and approved by the Commissioner of Insurance.

(3) Every principal shall make certain that combustible materials necessary to the curriculum and for the operation of the school shall be stored in a safe and orderly manner.

(4) Every principal shall make certain that all supplies, such as oily rags, mops, etc., which may cause spontaneous combustion, shall be stored in an orderly manner in a well-ventilated place.

(5) Every principal shall make certain that all trash and rubbish shall be removed from the school building daily. No trash or rubbish shall be permitted to accumulate in a school attic, basement or other place on the premises.

(6) Every principal shall cooperate in every way with the authorized building inspector, electrical inspector, county fire marshal or other designated person making the inspections required by G.S. 115-150.2.

It shall further be the duty of the principal to bring to the attention of the local superintendent of schools the failure of the building inspector, electrical inspector, county fire marshal, or other person to make the inspections required by G.S. 115-150.2. It shall further be the duty of the principal to call to the attention of the superintendent of schools all recommendations growing out of the inspections, in order that the proper authorities can take steps to bring about the necessary corrections. (1957, c. 844; 1959, c. 573, s. 14.)

§ 115-150.2. Inspection of schools for fire hazards; reports; rules and regulations; removal or correction of hazard. — Every public school building in the State shall be inspected every four months in accordance with the following plan: Provided, that the periodic inspections herein required shall be at least 90 days apart:

(1) Each school building shall be inspected to make certain that none of the fire hazards enumerated in subdivisions (1), (3), (4) and (5) of G.S. 115-150.1 exist, and to insure that all heating, mechanical, electrical, gas, and other equipment and appliances are properly installed and maintained in a safe and serviceable manner as prescribed by the North Carolina Building Code. Following each inspection, the person or persons making the inspection shall furnish to the principal of the school a written report of conditions found during inspection, upon forms furnished by the Commissioner of Insurance, and the person or persons making the inspection shall also furnish a copy of the report to the superintendent of schools; the superintendent shall keep such copy on file for a period of three years. In addition to the periodic inspections herein required, any alterations or additions to existing school buildings or to school building utilities or appliances shall be inspected immediately following completion.

(2) The board of county commissioners of each county shall designate the person or persons to make the inspections and reports required by subdivision (1) of this section. The board may designate any city or county building inspector, any city or county fire prevention bureau, any city or county electrical inspector, the county fire marshal, or any other qualified person or persons, but no person shall make any electrical inspection unless he shall be qualified as required by G.S. 160-122. Nothing in G.S. 115-150.1 to 115-150.3 shall be construed as prohibiting two or more counties from designating the same person or persons to make the inspections and reports required by subdivision (1) of this section. The board of county commissioners shall compensate or provide for the compensation of the person or persons designated to make all such inspections and reports. The board of county commissioners may make appropriations in the general fund of the county to meet the costs of such inspections, or in the alternative the board may add appropriations to the school current expense fund to meet the costs thereof: Provided, that if appropriations are added to the school current expense fund, such appropriations shall be in addition to and not in substitution of existing school current expense appropriations.

(3) It shall be the duty of the State Commissioner of Insurance, the State Superintendent of Public Instruction, and the State Board of Education to prescribe any additional rules and regulations which they may deem necessary in connection with such inspections and reports for the reduction of fire hazards and protection of life and property in public schools.

(4) It shall be the duty of each principal to make certain that all fire hazards called to his attention in the course of the inspections and reports required by subdivision (1) of this section are immediately removed or corrected, if such removal or correction can be accomplished by the principal. If such removal or correction cannot be accomplished by the principal, it shall be the duty of the principal to bring the matter to the attention of the superintendent.

(5) It shall be the duty of each superintendent of schools to make certain that all fire hazards called to his attention in the course of the inspections and reports required by subdivision (1) of this section and

not removed or corrected by the principals as required by subdivision (4) of this section are removed or corrected, if such removal or correction can be brought about within the current appropriations available to the superintendent. Where any removal or correction of a hazard will require the expenditure of funds in excess of current appropriations, it shall be the duty of the superintendent to bring the matter to the attention of the appropriate board of education, and the board of education in turn shall bring the same to the attention of the board of county commissioners, in order that immediate steps be taken, within the framework of existing law, to remove or correct the hazard. (1957, c. 844; 1959, c. 573, s. 14.)

Editor's Note. — Section 160-122, referred to in subdivision (2), was repealed by Session Laws 1971, c. 698, s. 2. As to present provisions relating to cities and towns, see Chapter 160A.

§ 115-150.3. Liability for failure to perform duties imposed by §§ 115-150 to 115-150.2. — Any person willfully failing to perform any of the duties imposed by G.S. 115-150, 115-150.1 or 115-150.2 shall be guilty of a misdemeanor and shall be fined not more than five hundred dollars ($500.00) in the discretion of the court. (1957, c. 844; 1959, c. 573, s. 14.)

§ 115-150.4. Refund of fees upon transfer of pupils. — (a) As used in this section:

(1) "Month" shall mean 20 school days;

(2) "First semester" shall mean the first 90 teaching days of the 180 days of the school year;

(3) "Second semester" shall mean the last 90 days of the 180 days constituting the school year;

(4) "Term" for the purposes of this section shall have the same meaning as that of first semester or second semester.

(b) In all cases where pupils of an administrative unit of the public school system transfer to some other public school in another administrative unit or such pupils are compelled to leave the school in which they are enrolled because of some serious or permanent illness, or for any other good and valid reason, then such pupils or their parents shall be entitled to a refund of the fees and charges paid by them as follows:

(1) If the transfer or departure of the pupil or pupils from the school in which they are enrolled takes place within one month after enrollment, then all such fees and charges shall be refunded in full;

(2) If the transfer or leaving the school on the part of said pupil or pupils takes place after the first month and before the middle of the first semester, then one half of the fees for the first semester shall be refunded, and all fees and charges for the second semester shall be refunded.

(3) If the pupil or pupils transfer or leave the school after the middle of the first semester, than no first semester fees or charges shall be refunded.

(4) If the fees and charges on the part of such pupil or pupils have been paid for a year and such pupil or pupils transfer or leave the school at the end of the first semester or within the first month of the second semester, then all second semester fees and charges shall be refunded in full;

(5) If the fees and charges herein described and set forth have been paid for one year, and the pupil or pupils transfer or leave the school before the middle of the second semester, then one half of the second semester fees shall be refunded;

(6) The words "fees" and "charges" as used in this section shall not include any fees or charges paid for insurance or fees charged for expendable materials.

(7) If the pupil or pupils transfer or leave the school after the middle of the second semester, then no fees shall be refunded.

(8) If the amount of total refund as determined by this section shall be less than one dollar ($1.00), no refund shall be paid.

(c) In all cases where semesters are designated as terms, the word "term" shall have the meaning as above set forth, and the refund shall be on the same basis as the semester refunds set forth in subsection (b).

(d) The principal shall be responsible for refunding fees and charges at the place of the collection of the fees and charges by check made payable to the parent or guardian of pupil or pupils leaving the school as noted in subsection (b). (1969, c. 756.)

§ 115-151. Salary increments for experience to teachers, principals and superintendents in armed and auxiliary forces. — The State Board of Education, in fixing the State standard salary schedule of teachers, principals and superintendents as authorized by law, shall provide that teachers, principals and superintendents who entered the armed or auxiliary forces of the United States after September 16, 1940, and who left their positions for such service, shall be allowed experience increments for the period of such service as though the same had not been interrupted thereby, in the event such persons return to the position of teachers, principals, or superintendents in the public schools of the State after having been honorably discharged from the armed or auxiliary forces of the United States. (1955, c. 1372, art. 17, s. 9.)

ARTICLE 17A.

Interstate Agreement on Qualifications of Educational Personnel.

§ 115-151.1. Purpose, findings, and policy. — (a) The states party to this agreement, desiring by common action to improve their respective school systems by utilizing the teacher or other professional educational person wherever educated, declare that it is the policy of each of them, on the basis of cooperation with one another, to take advantage of the preparation and experience of such persons wherever gained, thereby serving the best interests of society, of education, and of the teaching profession. It is the purpose of this agreement to provide for the development and execution of such programs of cooperation as will facilitate the movement of teachers and other professional educational personnel among the states party to it, and to authorize specific interstate educational personnel contracts to achieve that end.

(b) The party states find that included in the large movement of population among all sections of the nation are many qualified educational personnel who move for family and other personal reasons but who are hindered in using their professional skill and experience in their new locations. Variations from state to state in requirements for qualifying educational personnel discourage such personnel from taking the steps necessary to qualify in other states. As a consequence, a significant number of professionally prepared and experienced educators is lost to our school systems. Facilitating the employment of qualified educational personnel, without reference to their states of origin, can increase the available educational resources. Participation in this Compact can increase the availability of educational manpower. (1969, c. 631, s. 1.)

§ 115-151.2. Definitions. — As used in this agreement and contracts made pursuant to it, unless the context clearly requires otherwise:

(1) "Accept," or any variant thereof, means to recognize and give effect to one or more determinations of another state relating to the qualifications of educational personnel in lieu of making or requiring a like determination that would otherwise be required by or pursuant to the laws of a receiving state.
(2) "Designated state official" means the educational official of a state selected by that state to negotiate and enter into, on behalf of his state, contracts pursuant to this agreement.
(3) "Educational personnel" means persons who must meet requirements pursuant to state law as a condition of employment in educational programs.
(4) "Originating state" means a state (and the subdivision thereof, if any) whose determination that certain educational personnel are qualified to be employed for specific duties in schools, is acceptable in accordance with the terms of a contract made pursuant to G.S. 115-151.3.
(5) "Receiving state" means a state (and the subdivisions thereof) which accepts educational personnel in accordance with the terms of a contract made pursuant to G.S. 115-151.3.
(6) "State" means a state, territory, or possession of the United States; the District of Columbia; or the Commonwealth of Puerto Rico. (1969, c. 631, s. 1.)

§ 115-151.3. Interstate educational personnel contracts. — (a) The designated state official of a party state may make one or more contracts on behalf of his state with one or more other party states providing for the acceptance of educational personnel. Any such contract for the period of its duration shall be applicable to and binding on the states whose designated state officials enter into it, and the subdivisions of those states, with the same force and effect as if incorporated in this agreement. A designated state official may enter into a contract pursuant to this section only with states in which he finds that there are programs of education, certification standards or other acceptable qualifications that assure preparation or qualification of educational personnel on a basis sufficiently comparable, even though not identical to that prevailing in his own state.

(b) Any such contract shall provide for:
(1) Its duration,
(2) The criteria to be applied by an originating state in qualifying educational personnel for acceptance by a receiving state,
(3) Such waivers, substitutions, and conditional acceptances as shall aid the practical effectuation of the contract without sacrifice of basic educational standards,
(4) Any other necessary matters.

(c) No contract made pursuant to this agreement shall be for a term longer than five years but any such contract may be renewed for like or lesser periods.

(d) Any contract dealing with acceptance of educational personnel on the basis of their having completed an educational program shall specify the earliest date or dates on which originating state approval of the program or programs involved can have occurred. No contract made pursuant to this agreement shall require acceptance by a receiving state of any persons qualified because of successful completion of a program prior to January 1, 1954.

(e) The certification or other acceptance of a person who has been accepted pursuant to the terms of a contract shall not be revoked or otherwise impaired because the contract has expired or been terminated. However, any certificate or other qualifying document may be revoked or suspended on any ground which would be sufficient for revocation or suspension of a certificate or other qualifying document initially granted or approved in the receiving state.

(f) A contract committee composed of the designated state officials of the contracting states or their representatives shall keep the contract under continuous review, study means of improving its administration, and report no less frequently than once a year to the heads of the appropriate education agencies of the contracting states. (1969, c. 631, s. 1.)

§ 115-151.4. Approved and accepted programs. — (a) Nothing in this agreement shall be construed to repeal or otherwise modify any law or regulation of a party state relating to the approval of programs of educational preparation having effect solely on the qualification of educational personnel within that state.

(b) To the extent that contracts made pursuant to this agreement deal with the educational requirements for the proper qualification of educational personnel, acceptance of a program of educational preparation shall be in accordance with such procedures and requirements as may be provided in the applicable contract. (1969, c. 631, s. 1.)

§ 115-151.5. Interstate cooperation. — The party states agree that:

(1) They will, so far as practicable, prefer the making of multilateral contracts pursuant to G.S. 115-151.3 of this agreement.

(2) They will facilitate and strengthen cooperation in interstate certification and other elements of educational personnel qualification and for this purpose shall cooperate with agencies, organizations, and associations interested in certification and other elements of educational personnel qualification. (1969, c. 631, s. 1.)

§ 115-151.6. Agreement evaluation. — The designated state officials of any party state(s) may meet from time to time as a group to evaluate progress under the agreement, and to formulate recommendations for changes. (1969, c. 631, s. 1.)

§ 115-151.7. Other arrangements. — Nothing in this agreement shall be construed to prevent or inhibit other arrangements or practices of any party state or states to facilitate the interchange of educational personnel. (1969, c. 631, s. 1.)

§ 115-151.8. Effect and withdrawal. — (a) This agreement shall become effective when enacted into law by two states. Thereafter it shall become effective as to any state upon its enactment of this agreement.

(b) Any party state may withdraw from this agreement by enacting a statute repealing the same, but no such withdrawal shall take effect until one year after the governor of the withdrawing state has given notice in writing of the withdrawal to the governors of all other party states.

(c) No withdrawal shall relieve the withdrawing state of any obligation imposed upon it by a contract to which it is a party. The duration of contracts and the methods and conditions of withdrawal therefrom shall be those specified in their terms. (1969, c. 631, s. 1.)

§ 115-151.9. Construction and severability. — This agreement shall be liberally construed so as to effectuate the purposes thereof. The provisions of this agreement shall be severable and if any phrase, clause, sentence, or provision of this agreement is declared to be contrary to the constitution of any state or of the United States, or the application thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this agreement and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this agreement shall be held contrary to the constitution of any state participating therein, the agreement shall remain in full force and effect as to the state affected as to all severable matters. (1969, c. 631, s. 1.)

§ 115-151.10. Designated state official. — For the purposes of the agreement set forth in this Article the "designated state official" for this State shall be the State Superintendent of Public Instruction. He shall enter into contracts pursuant to G.S. 115-151.3 only with the approval of the specific text thereof by the State Board of Education. (1969, c. 631, s. 2.)

State Government Reorganization. — The Interstate Agreement authority was transferred to the Department of Public Education by § 143A-47, enacted by Session Laws 1971, c. 864.

ARTICLE 18.

Certification and Salaries of Employees; Workmen's Compensation.

§ 115-152. Certificate prerequisite to employment. — All teachers, supervisors and other professional personnel employed in the public schools of the State, or in schools receiving public funds, shall be required to hold certificates in accordance with the law, and no contract for employment shall be valid until the certificate is secured: Provided, that nothing herein shall prevent the employment of temporary personnel under such rules as the State Board of Education may prescribe: Provided, further, that no person shall be employed to teach who is under 18 years of age. (1955, c. 1372, art. 18, s. 1.)

This section and § 115-155 declare unlawful the employment of any teacher, supervisor or other professional personnel who does not hold a certificate in compliance with the provisions of law or in accordance with the regulations of the State Board of Education governing emergency substituted personnel. James v. Beaufort County Bd. of Educ., 348 F. Supp. 711 (E.D.N.C. 1971), aff'd, 465 F.2d 477 (4th Cir. 1972).

Teacher on a probation emergency B certificate was required to take the National Teacher Examination and attain a satisfactory score in order to have a standard certificate, which was required for the school in which he taught, both to remain accredited by the State of North Carolina, and to remain in the employ of the school board. James v. Beaufort County Bd. of Educ., 348 F. Supp. 711 (E.D.N.C. 1971), aff'd, 465 F.2d 477 (4th Cir. 1972).

Stated in Guthrie v. Taylor, 279 N.C. 703, 185 S.E.2d 193 (1971), cert. denied, 406 U.S. 920, 92 S. Ct. 1774, 32 L. Ed. 2d 119 (1972).

§ 115-152.1. Discrimination against blind prohibited in training and hiring of teachers. — No person otherwise qualified shall be denied the right to receive credentials from the State Board of Education, to receive training for the purpose of becoming a teacher, or to engage in practice teaching in any school on the grounds he is totally or partially blind; nor shall any school district refuse to engage a teacher on such grounds, provided, that such blind teacher is able to carry out the duties of the position for which he applies in the school district. (1971, c. 949.)

§ 115-153. Certifying and regulating the grade and salary of teachers; furnishing to county or city boards available personnel information. — The State Board of Education shall have entire control of certificating all applicants for teaching, supervisory, and professional positions in all public elementary and high schools of North Carolina; and it shall prescribe the rules and regulations for the renewal and extension of all certificates, and shall determine and fix the salary for each grade and type of certificate which it authorizes; provided, that the State Board of Education shall require each applicant for an initial certificate or graduate certificate to demonstrate his or her academic and professional preparation by achieving a prescribed minimum score at least equivalent to that required by the Board on November 30, 1972, on a standard examination appropriate and adequate for that purpose; provided, further, that in the event

the Board shall specify the National Teachers Examination for this purpose, the required minimum score shall not be lower than that which the Board required on November 30, 1972.

Upon request the State Board of Education and the State Department of Public Instruction shall furnish to any county or city board of education any and all available personnel information relating to certification, evaluation and qualification including, but not limited to, semester hours or quarterly hours completed, graduate work, grades, scores, etc., that are on that date in the files of the State Board of Education or Department of Public Instruction. (1955, c. 1372, art. 18, s. 2; 1965, c. 584, s. 20.1; 1973, c. 236.)

Editor's Note. — The 1973 amendment added the two provisos at the end of the first paragraph.

Rule Making Authority Is Not Unconstitutional Delegation of Power. — Section 115-11(14)a and this section neither enlarge nor restrict the authority to make rules and regulations concerning the certification of teachers conferred by the Constitution of North Carolina upon the State Board of Education. Thus, they are not delegations of power to the State Board of Education by the General Assembly. Guthrie v. Taylor, 279 N.C. 703, 185 S.E.2d 193 (1971), cert. denied, 406 U.S. 920, 92 S. Ct. 1774, 32 L. Ed. 2d 119 (1972).

Requirement of Certificate Renewal Is Constitutional. — The Supreme Court held that the promulgation and administration of the regulation requiring all teachers employed in the public school system to obtain a renewal of their teaching certificates every five years falls within the authority conferred upon the State Board of Education by the Constitution of North Carolina. Guthrie v. Taylor, 279 N.C. 703, 185 S.E.2d 193 (1971), cert. denied, 406 U.S. 920, 92 S. Ct. 1774, 32 L. Ed. 2d 119 (1972).

Since the regulation adopted by the State Board of Education requiring all teachers employed in the public school system to obtain a renewal of their teaching certificates every five years cannot be deemed unreasonable or arbitrary in relation to the objective of improved instruction, there is no basis for holding its application to the plaintiff, and others similarly situated, is a violation of N.C. Const., Art. I, § 19. Guthrie v. Taylor, 279 N.C. 703, 185 S.E.2d 193 (1971), cert. denied, 406 U.S. 920, 92 S. Ct. 1774, 32 L. Ed. 2d 119 (1972).

A regulation of the State Board of Education which requires all teachers employed in the public school system of North Carolina to obtain a renewal of their teaching certificates every five years and prescribes for all teachers the same number of credits and the same methods for obtaining such credits for the renewal of their certificates does not deny equal protection of the law, notwithstanding that the regulation is not made to apply to employees of the State Board of Education whose duties are performed in the Board's offices in the City of Raleigh who are not engaged in teaching. Since the purpose of requiring a certificate to teach is to assure good quality of performance in the classroom, there is an obvious and reasonable basis for making the rule applicable to those who teach and omitting from its applicability those who do not. Guthrie v. Taylor, 279 N.C. 703, 185 S.E.2d 193 (1971), cert. denied, 406 U.S. 920, 92 S. Ct. 1774, 32 L. Ed. 2d 119 (1972).

There being a reasonable basis for the requirement that a teacher periodically renew his or her certificate by further study or by educational travel the Supreme Court is not authorized to substitute its judgment for that of the State Board of Education and to declare the regulation, adopted by the Board, invalid on the ground that, in its opinion, some other method for earning the required credits for renewal would be equally as satisfactory in result. Guthrie v. Taylor, 279 N.C. 703, 185 S.E.2d 193 (1971), cert. denied, 406 U.S. 920, 92 S. Ct. 1774, 32 L. Ed. 2d 119 (1972).

Stated in North Carolina Teachers Ass'n v. Asheboro City Bd. of Educ., 393 F.2d 736 (4th Cir. 1968).

§ 115-153.1. Authority of county and city boards of education to purchase annuity contracts for employees. — Notwithstanding the provisions of this Chapter for the adoption of State and local salary schedules for the pay of teachers, principals, superintendents, and other school employees, county and city boards of education may enter into annual contracts with any employee of such board which provide for a reduction in salary below the total established compensation or salary schedule for a term of one year. The county or city board of education shall use the funds derived from the reduction in the salary of the employee to purchase a nonforfeitable annuity contract for the benefit of said

employee. An employee who has agreed to a salary reduction for this purpose shall not have the right to receive the amount of the salary reduction in cash or in any other way except the annuity contract. Funds used by the county and city boards of education for the purchase of an annuity contract shall not be in lieu of any amount earned by the employee before his election for a salary reduction has become effective.

The agreement for salary reductions referred to herein shall be effected under any necessary regulations and procedures adopted by the State Board of Education and on forms prepared by the State Board of Education.

Notwithstanding any other provisions of this section, the amount by which the salary of any employee is reduced pursuant to this section shall not be excluded, but shall be included, in computing and making payroll deductions for social security and retirement system purposes, and in computing and providing matching funds for retirement system purposes. (1963, c. 582.)

§ 115-153.2. Authority for payroll deductions for group insurance and credit union loans. — (a) The State Board of Education may authorize and empower any county or city board of education, the board of trustees of any community college or technical institute, or other governing authority, within the State, to establish a voluntary payroll deduction plan for:

(1) Premiums for any type of group insurance established and authorized by the laws of the State;

(2) Amounts authorized by members of the State Employees' Credit Union or any local teachers' credit unions to be deposited with such organizations;

(3) Loans made to teachers by credit unions.

(b) Any employee of any county or city board of education, any community college, technical institute, or of any educational association, may enter into a written agreement with his or her employer for the purpose of carrying out the provisions of this section. The State Board of Education is authorized and empowered to make and promulgate rules and regulations to carry out the purposes of this section. (1969, c. 591.)

§ 115-153.3. Additional payroll deductions authorized; written consent to county or city administrative unit. — Any public school teacher who is a member of a credit union organized and established under Chapter 54 of the General Statutes may, by executing a written consent to the county or city administrative unit by whom employed, authorize periodical payment or obligation to such credit union to be deducted from their salaries or wages, and such deductions shall be made and paid to said credit union as and when said salaries and wages are payable. (1969, c. 890.)

§ 115-154. Local approval of certificate required. — No certificate issued by the board shall be valid until approved and signed by the superintendent of the administrative unit in which the holder of said certificate resides, or contracts to teach, and the certificate when so approved shall be of statewide validity. Should any superintendent refuse to approve and sign any such certificate, he shall notify the State Board of Education and state in writing the reasons for such refusal. The said Board shall have the right, upon appeal by the holder of said certificate, to review and investigate and finally determine the matter. (1955, c. 1372, art. 18, s. 3.)

§ 115-155. Employment of persons without certificate unlawful; salaries not paid. — It shall be unlawful for any board of education or school committee to employ or to keep in service any teacher, supervisor, or other professional school personnel who does not hold a certificate in compliance with the provisions of law or in accordance with the regulations of the State Board of Education governing emergency substituted personnel.

The county or city superintendent, or other official, is forbidden to approve any voucher for salary for any personnel employed in violation of the provisions of this section and the treasurer of the county or of the city schools is hereby forbidden to pay out of the school funds the salary of any such person. (1955, c. 1372, art. 18, s. 4.)

Section 115-152 and this section declare unlawful the employment of any teacher, supervisor or other professional personnel who does not hold a certificate in compliance with the provisions of law or in accordance with the regulations of the State Board of Education governing emergency substituted personnel. James v. Beaufort County Bd. of Educ., 348 F. Supp. 711 (E.D.N.C. 1971), aff'd, 465 F.2d 477 (4th Cir. 1972).

Teacher on a probation emergency B certificate was required to take the National Teacher Examination and attain a satisfactory score in order to have a standard certificate, which was required for the school in which he taught, both to remain accredited by the State of North Carolina, and to remain in the employ of the school board. James v. Beaufort County Bd. of Edu., 348 F. Supp. 711 (E.D.N.C. 1971), aff'd, 465 F.2d 477 (4th Cir. 1972).

Stated in Guthrie v. Taylor, 279 N.C. 703, 185 S.E.2d 193 (1971), cert. denied, 406 U.S. 920, 92 S. Ct. 1774, 32 L. Ed. 2d 119 (1972).

§ 115-156. Colleges to aid as to certificates. — Each and every college or university of the State is hereby authorized to aid public school teachers or prospective teachers in securing, raising, or renewing their certificates, in accordance with the rules and regulations of the State Board of Education. (1955, c. 1372, art. 18, s. 5.)

This section does not purport to enlarge or restrict the power of the State Board of Education to promulgate and administer rules and regulations governing the issuance and the renewal of teachers' certificates. Guthrie v. Taylor, 279 N.C. 703, 185 S.E.2d 193 (1971), cert. denied, 406 U.S. 920, 92 S. Ct. 1774, 32 L. Ed. 2d 119 (1972).

§ 115-157. Pay of school officials and other employees. — School officials and other employees shall be paid promptly when their salaries are due provided the legal requirements for their employment and service have been met. All school officials and other employees employed by any administrative unit or school district, who are to be paid from local funds, shall be paid promptly as provided by law and as State-allotted school officials and other employees are paid.

Public school employees paid from State funds shall be paid as follows:

(1) Academic Teachers. — Regular State-allotted teachers shall be employed for a period of 10 calendar months and shall be paid monthly at the end of each calendar month of service. Included within the 10 calendar months' employment shall be 1.25 days of annual vacation leave for each month of the 10 months' service which shall be designated by each county and city board of education at a time when students are not scheduled to be in regular attendance. Included within the 10 calendar months' employment each county and city board of education shall designate the same or an equivalent number of legal holidays occurring within the period of employment for academic teachers as those designated by the State Personnel Council for State employees. Within policy adopted by the State Board of Education, each county and city board of education shall develop rules and regulations designating what additional portion of the 10 calendar months not devoted to classroom teaching, holidays, or annual leave, shall apply to service rendered before the opening of the school term, during the school term, and after the school term and to fix and regulate the duties

of State-allotted teachers during said period, but in no event shall the total number of work days exceed 200 days. County and city boards of education shall consult with the employed public school personnel in the development of the 10-calendar-months schedule.

(2) Occupational Education Teachers. — State-allotted man-months of service to county and city boards of education as provided by the State Board of Education shall be used for the employment of teachers of occupational education for a term of employment as determined by the county and city boards of education and teachers so employed shall be paid on a calendar-month basis at the end of each calendar month of service for the term of their employment. Included within their term of employment shall be the same rate of annual vacation leave and legal holidays provided under the same conditions as set out in subdivision (1) above, but in no event shall the total work days for a 10-month employee exceed 200 days in a 10-month schedule and the work week shall constitute five days for all occupational teachers regardless of the employment period.

(3) Supervisors and Classified Principals. — State-allotted supervisors and classified principals shall be employed for a term of 12 calendar months and shall be paid monthly at the end of each calendar month of service for the term of their employment. Included within their term of employment shall be provided the same rate of annual vacation leave and legal holidays as set out in subdivision (1) above, said annual leave to be taken as determined by each county and city board of education.

(4) Superintendents and Other Employees on an Annual Basis. — The salaries of superintendents and others employed on an annual basis shall be paid monthly on the basis of each calendar month of service. Included within their term of employment shall be provided the same rate of annual vacation leave and legal holidays as set out in subdivision (1) above, said annual leave to be taken as determined by each county and city board of education.

(5) Other School Employees. — Other school employees paid on an hourly or other basis shall be paid at a time as determined by each county and city board of education and expenditures from State funds shall be within allocations made by the State Board of Education and in accordance with rules and regulations approved by the State Board of Education concerning allocations of State funds. Included within the term of employment shall be provided for full-time employees the same rate of annual vacation leave and legal holidays as set out in subdivision (1) above and said vacation leave shall be taken under policies determined by each county and city board of education.

(6) The provisions for annual vacation leave and holidays referred to in this section shall apply only to such persons employed by the county and city boards of education during the days designated by each county and city board of education as vacation days. Vacation days shall not be used for extending the term of employment of individuals and shall not be cumulative from one fiscal year to another fiscal year.

(7) Each county and city board of education shall sustain any loss by reason of an overpayment to any school official or other employee paid from State funds.

(8) All of the foregoing provisions of this section shall be subject to the requirement that at least fifty dollars ($50.00) or other minimum amount required by federal social security laws, of the compensation of each school employee covered by the Teachers' and State Employees' Retirement System or otherwise eligible for Social Security coverage,

shall be paid in each of the four quarters of the calendar year. (1955, c. 1372, art. 18, s. 6; 1961, c. 1085; 1971, c. 1052; 1973, c. 647, s. 1.)

Editor's Note. — The 1973 amendment rewrote this section.

Session Laws 1973, c. 647, s. 2, provides that implementation of the provisions of the 1973 amendment to this section is dependent upon the availability of funds.

Approval of Vouchers. — Mandamus is the proper action to compel a superintendent to approve a teacher's voucher. The claim is not a money demand. If there are any reasons why the vouchers should not be signed, they are matters to be heard by the court, but the signing by the superintendent is a mere ministerial duty. Ducker v. Venable, 126 N.C. 447, 35 S.E. 818 (1900).

§ 115-157.1. Salaries of teachers and principals in certain State institutions. — All persons employed as teachers or principals in the schools and institutions listed in subsection (p) of G.S. 115-142 shall be compensated at the same rate as are teachers in the public schools in accordance with the salary schedule adopted by the State Board of Education. (1973, c. 315, s. 2.)

§ 115-158. Authority of superintendent to issue salary vouchers. — The authority for a superintendent to issue vouchers for the salary of all school employees, whether paid from State or local funds, shall be a monthly payroll, prepared on forms furnished by the State Board of Education and containing all information required by the controller of the State Board of Education. This monthly payroll shall be signed by the principal of the school. If any voucher so drawn is chargeable against district funds, the amount so charged and the district to which said amount is charged shall be specified on the voucher.

No deductions shall be made from salaries of teachers of vocational agriculture and home economics whose salaries are paid in part from State and federal vocational funds while in attendance upon community, county and State meetings called for the specific purpose of promoting the agricultural interests of North Carolina, when such attendance is approved by the superintendent of the administrative unit and the State Director of Vocational Education. (1955, c. 1372, art. 18, s. 7; 1965, c. 584, s. 16.)

§ 115-159. Cashing vouchers and payment of sums due on death of school employees. — In the event of the death of any superintendent, teacher, principal, or other school employee to whom payment is due for or in connection with services rendered by such person or to whom has been issued any uncashed voucher for or in connection with services rendered, when there is no administration upon the estate of such person, such voucher may be cashed by the clerk of the superior court of the county in which such deceased person resided, or a voucher due for such services may be made payable to such clerk, who will treat such sums as a debt owed to the intestate under the provisions of G.S. 28-68. (1955, c. 1372, art. 18, s. 8; 1965, c. 395.)

§ 115-159.1. Salary of teacher injured during episode of violence. — (a) Any teacher as defined in G.S. 135-1(25) who, while engaged in the course of his employment or in any activities incidental thereto, suffers any injury or disability resulting from or arising out of any episode of violence by one or more persons shall be entitled to receive his full salary during the shortest of these periods: one year, or the continuation of his disability, or the time during which he is unable to engage in his employment because of injury. An episode of violence shall be defined to mean but shall not be limited to any acts of violence directed toward any school building or facility, or to any teacher or any student by any person including but not limited to another student. These benefits shall be in lieu of all other income or disability benefits payable under workmen's compensation to such teacher only during the period prescribed herein. Thereafter, such teacher shall be paid such income or disability payments to

which he might be entitled under workmen's compensation. If the employment of a substitute teacher is necessitated by the disability of the injured teacher, the salary of such substitute teacher shall be paid from the same source of funds from which the teacher is paid. This section shall in no way limit the right of the injured teacher to receive the benefits of medical, hospital, drug and related expense payments from any source, including workmen's compensation. Provided further that this section shall not apply to any teacher who is injured while he himself participates in or provokes such episode of violence except as is incident to the maintenance or restoration of order or classroom discipline or to defend himself. Provided further that this section shall be given liberal construction and interpretation as to any and all definitions, conditions, and factual circumstances set forth herein.

(b) Any teacher claiming the benefits of this section shall file claim with the board of education employing such teacher within one year after the occurrence giving rise to his alleged injury. That board of education shall, within 30 days after receipt of such claim, decide whether and to what extent that teacher is entitled to the benefits of this section and shall forthwith transmit its decision in writing to such teacher. That teacher shall, however, have the right to appeal the decision of that board of education to the North Carolina Industrial Commission by serving that board of education and the North Carolina Industrial Commission with written notice thereof within 30 days after receipt of the board's written decision. In determining all appeals under this section the North Carolina Industrial Commission shall constitute a court for the purpose of hearing de novo and passing upon all claims thereby presented in accordance with procedures utilized by the Commission in determining claims under the Workmen's Compensation Act. The decision of the Industrial Commission in each instance shall be subject to appeal to the North Carolina Court of Appeals as provided in G.S. 143-293 and 143-294. (1971, c. 640, ss. 1, 2; 1973, c. 753.)

Editor's Note. — The 1973 amendment, in subsection (a), rewrote the first sentence, added the second sentence and the last sentence, and inserted "or classroom discipline" near the end of the next-to-last sentence.

§ 115-160. Workmen's Compensation Act applicable to school employees. — The provisions of the Workmen's Compensation Act shall be applicable to all school employees, and the State Board of Education shall make such arrangements as are necessary to carry out the provisions of the Workmen's Compensation Act as are applicable to such employees as are paid from State school funds. Liability of the State for compensation shall be confined to school employees paid by the State from State school funds for injuries or death caused by accident arising out of and in the course of their employment in connection with the State-operated nine months' school term. The State shall be liable for said compensation on the basis of the average weekly wage of such employees as defined in the Workmen's Compensation Act, whether all of said compensation for the nine months' school term is paid from State funds or in part supplemented by local funds. The State shall also be liable for workmen's compensation for all school employees employed in connection with the teaching of vocational agriculture, home economics, trades and industries, and other vocational subjects, supported in part by State and federal funds, which liability shall cover the entire period of service of such employees. The county and city administrative units shall be liable for workmen's compensation for school employees, including lunchroom employees, whose salaries or wages are paid by such local units from local or special funds. Such local units are authorized and empowered to provide insurance to cover such compensation liability and to include the cost of such insurance in their annual budgets.

The provisions of this section shall not apply to any person, firm or corporation making voluntary contributions to schools for any purpose, and such person, firm or corporation shall not be liable for the payment of any sum of money under this Subchapter. (1955, c. 1372, art. 18, s. 9.)

The expression "arising out of and in the course of their employment," as used in this section, carries the same meaning and calls for the same interpretation and application as does the similar expression appearing in the text of the Workmen's Compensation Act, § 97-2, subdivision (6). Sweatt v. Rutherford County Bd. of Educ., 237 N.C. 653, 75 S.E.2d 738 (1953).

Murder of high school principal by student held not to arise out of school employment. Sweatt v. Rutherford County Bd. of Educ., 237 N.C. 653, 75 S.E.2d 738 (1953).

Janitor Injured during Employment by Municipal Board. — Findings supported the conclusion of law that a janitor was injured during his employment by the municipal board of education and that the municipal board and its carrier were solely liable for compensation for his injury. Casey v. Board of Educ., 219 N.C. 739, 14 S.E.2d 853 (1941).

ARTICLE 18A.

Payroll Savings Plan for Purchase of United States Bonds.

§ 115-160.1. Authority of administrative school unit to establish plan. — The State Board of Education may authorize any county or city administrative school unit within the State to establish a voluntary payroll deduction plan for the purchase of United States Savings Bonds by the employees of such county or city administrative unit, and to set up the necessary machinery for carrying out the purposes of this Article. (1957, c. 751, s. 1.)

§ 115-160.2. Agreement between employee and board of education. — Any employee of any county or city administrative school unit within the State may enter into a written agreement with the county or city board of education by which he is employed and which has adopted such payroll savings plan to authorize deductions from his salary of certain designated sums to be invested in United States savings bonds of the kind and type specified in such agreement. (1957, c. 751, s. 2.)

§ 115-160.3. Payroll deductions and investment in United States savings bonds. — Upon execution of such agreement by an employee of any county or city administrative school unit the county or city board of education employing such person is authorized and empowered to deduct the sum specified in said agreement from the weekly or monthly salary of such employee and to show deductions on all payrolls in a manner similar to that in which withholding tax and retirement are shown. Such sums shall be deposited monthly with a depository authorized by the United States Treasury Department. The sums so deposited shall be held by the depository until sufficient moneys have accumulated to the credit of each individual sufficient to purchase a bond, and such sums shall be invested in United States savings bonds for and on behalf of such employee, and the bonds shall be delivered to the employee as soon as practicable. Provided that no coercion shall be exercised to require any person to participate in such plan. (1957, c. 751, s. 3.)

§ 115-160.4. Cancellation of agreement; refund to employee. — Such agreement may be canceled by the employee executing the same by giving written notice to the county or city superintendent of schools who is ex officio secretary to the county or city board of education, not later than the fifteenth day of the month in which he desires such agreement to be terminated; and the county or city board of education may cancel any agreement herein provided for upon giving 10 days' written notice to the affected employee. Upon the

termination of the agreement, the depository is hereby authorized and directed to refund any amount of money held for such employee. (1957, c. 751, s. 4.)

ARTICLE 18B.

Student Teachers.

§ 115-160.5. "Student teacher" and "student teaching" defined. — A "student teacher" is any student enrolled in an institution of higher education approved by the State Board of Education for the preparation of teachers who is jointly assigned by that institution and a county or city board of education to student-teach under the direction and supervision of a regularly employed certified teacher.

"Student teaching" may include those duties granted to a teacher by G.S. 115-146 and any other part of the school program for which either the supervising teacher or the principal is responsible. (1969, c. 638, s. 1.)

§ 115-160.6. Legal protection. — A student teacher under the supervision of a certified teacher or principal shall have the protection of the laws accorded the certified teacher. (1969, c. 638, s. 1.)

Quoted in Moore v. Gaston County Bd. of Educ., 357 F. Supp. 1037 (W.D.N.C. 1973).

§ 115-160.7. Assignment of duties. — It shall be the responsibility of a supervising teacher, in cooperation with the principal and the representative of the teacher-preparation institution, to assign to the student teacher responsibilities and duties that will provide adequate preparation for teaching. (1969, c. 638, s. 1.)

SUBCHAPTER VIII. PUPILS.

ARTICLE 19.

Census, Admissions and Attendance.

§ 115-161: Repealed by Session Laws 1973, c. 1113.

§ 115-162. Age requirement and time of enrollment. — Children to be entitled to enrollment in the public schools for the school year 1955-1956, and each year thereafter, must have passed the sixth anniversary of their birth before October 1 of the year in which they enroll, and must enroll during the first month of the school year: Provided, that if a particular child has already been attending school in another state in accordance with the laws or regulations of the school authorities of such state before moving to and becoming a resident of North Carolina, such child will be eligible for enrollment in the schools of this State regardless of whether such child has passed the sixth anniversary of his birth before October 1. The State Board of Education is hereby authorized and empowered, in its discretion, to change the above dates of October 1. The principal of any public school shall have the authority to require the parents of any child presented for admission for the first time to such school to furnish a certified copy of the birth certificate of such child, which shall be furnished without charge by the register of deeds of the county having on file the record of the birth of such child, or other satisfactory evidence of date of birth. (1955, c. 1372, art. 19, s. 2; 1969, c. 1213, s. 4; 1973, c. 603, s. 3.)

Cross Reference. — For present provisions as to kindergartens, see §§ 115-205.11 through 115-205.13.

Editor's Note. — The 1973 amendment deleted the paragraph added by the 1969 amendment.

§ 115-163. Pupils residing in school district shall have advantages of public schools. — All pupils residing in a school district or attendance area, and who have not been removed from school for cause, shall be entitled to all the privileges and advantages of the public schools of such district or attendance area in such school buildings to which they are assigned by county and city boards of education: Provided, that wherever pupils from nontax units, districts, or attendance areas, are assigned to a school in a tax unit, district, or attendance area, the assignment shall be for only the current school year, unless satisfactory agreements are reached between all units, districts, or attendance areas concerned: Provided, further, that pupils residing in one administrative unit may be assigned either with or without the payment of tuition to a school located in another administrative unit upon such terms and conditions as may be agreed in writing between the boards of education of the administrative units involved and entered upon the official records of such boards: Provided, further, that the assignment of pupils living in one administrative unit or district to a school located in another administrative unit or district, either with or without the payment of tuition, shall have no effect upon the right of the administrative unit or district to which said pupils are assigned to levy and collect any supplemental tax heretofore or hereafter voted in such administrative unit or district: Provided, further, the boards of education of adjacent administrative units may operate schools in adjacent units upon written agreements between the respective boards of education and approval by the county commissioners and the State Board of Education.

Unless otherwise assigned by the county or city board of education, the following pupils are entitled to attend the schools in the district or attendance area in which they reside:

(1) All persons of the district or attendance area who have not completed the prescribed course for graduation in the high school. Provided, the superintendent, or the principal with the approval of the superintendent, of the school administrative unit may, in his discretion, prohibit the enrollment of or remove from school any pupil who has attained the age of 21 years.

(2) All pupils whose parents have recently moved into the unit, district, or attendance area for the purpose of making their legal residence in the same.

(3) Any pupil or pupils living with either father, mother or guardian who has made his or her permanent home within the district. (1955, c. 1372, art. 19, s. 3; 1971, c. 153.)

State Board No Longer Has Authority to Assign Children from One Unit to Another. — By virtue of the comprehensive rewriting of this Chapter by Session Laws 1955, c. 1372, the State Board no longer has the authority formerly vested in it to assign children from one administrative unit or district to another for the school term. In re Assignment of School Children, 242 N.C. 500, 87 S.E.2d 911 (1955).

§ 115-164. Children at orphanages permitted to attend public schools. — Children living in and cared for and supported by an institution established or incorporated for the purpose of rearing and caring for orphan children shall be considered legal residents of the administrative unit in which the institution is located, and a part or all of said orphan children shall be permitted to attend the public school or schools or their administrative unit: Provided, that the

provisions of this section shall be permissive only, and shall not be mandatory. (1955, c. 1372, art. 19, s. 4.)

Purpose of Trust Not Affected by Section. — A trust fund created by will for the purpose of educating through high school a girl inmate of an orphan asylum to be chosen by the board of trustees from time to time did not fall into the residuary clause for failure of the purpose of the trust on the ground that the State-educated orphan children through high school without charge under the provisions of a statute similar to this section, since the statute made the payment for the education of the children in orphan asylums permissive only. Humphrey v. Board of Trustees, 203 N.C. 201, 165 S.E. 547 (1932).

§ 115-165. Children not entitled to attend public schools. — A child so severely afflicted by mental, emotional or physical incapacities as to make it unlikely for such child to substantially profit by instruction given in the public schools shall not be permitted to attend the public schools of the State. When such child is presented for enrollment in a public school, it shall be the duty of the county or city superintendent of schools to have made the appropriate medical, social, psychological and educational examination of the child to determine whether the child can profit from attending the public schools. When appropriate the school superintendent also may consult with the local health director and county director of social services. Upon receipt of a report indicating that the child cannot substantially profit from instruction given in the public school, the county or city superintendent of schools is authorized to exclude the child from the public schools.

If the child is excluded from the public schools, the parent, person standing in loco parentis, or guardian of the child may appeal the superintendent's decision to the city or county board of education as the case may be. Such board of education may uphold the superintendent's decision to exclude the child or it may reverse the decision and order the child's enrollment. If it deems necessary, the board of education may require additional examination of the child. In the event the board upholds the superintendent's decision to exclude the child, the action of the board of education shall be the final administrative determination. The parent or guardian, however, shall have the right to appeal the school board's decision to the court under Chapter 150[A] of the North Carolina General Statutes. In all such cases in which a child is excluded from a public school, a complete record of the transaction shall be available to the parent, person standing in loco parentis, or guardian at their request. (1955, c. 1372, art. 19, s. 5; 1961, c. 186; 1965, c. 584, s. 17; 1969, cc. 340, 982; 1973, c. 1331, s. 3.)

Editor's Note. — Pursuant to Session Laws 1973, c. 1331, s. 3, effective July 1, 1975, the reference to Chapter 150[A] has been substituted for a reference to Article 33 of Chapter 143.

Due Process Requirements for Prolonged Suspension. — Where exclusion or suspension for any considerable period of time is a possible consequence of proceedings, due process requires a number of procedural safeguards to students such as: (1) notice to parents and student in the form of a written and specific statement of the charges which, if proved, would justify the punishment sought; (2) a full hearing after adequate notice; (3) which hearing is conducted by an impartial tribunal; (4) the right to examine exhibits and other evidence against the student; (5) the right to be represented by counsel (though not at public expense); (6) the right to confront and examine adverse witnesses; (7) the right to present evidence on behalf of the student; (8) the right to make a record of the proceedings; and, (9) the requirement that the decision of the authorities be based upon substantial evidence. Givens v. Poe, 346 F. Supp. 202 (W.D.N.C. 1972).

Limited Court Review. — Court review of suspensions and exclusions, regardless of where the child lives, is limited by this section to the superior court under former Chapter 143, Article 33 (now Chapter 150A), the Administrative Procedure Act. Givens v. Poe, 346 F. Supp. 202 (W.D.N.C. 1972).

ARTICLE 20.

General Compulsory Attendance Law.

§ 115-166. Parent or guardian required to keep child in school; exceptions. — Every parent, guardian or other person in this State having charge or control of a child between the ages of seven and 16 years shall cause such child to attend school continuously for a period equal to the time which the public school to which the child is assigned shall be in session. No person shall encourage, entice or counsel any such child to be unlawfully absent from school.

The principal, superintendent, or teacher who is in charge of such school shall have the right to excuse a child temporarily from attendance on account of sickness or other unavoidable cause which does not constitute unlawful absence as defined by the State Board of Education. The term "school" as used herein is defined to embrace all public schools and such nonpublic schools as have teachers and curricula that are approved by the county or city superintendent of schools or the State Board of Education.

All nonpublic schools receiving and instructing children of a compulsory school age shall be required to keep such records of attendance and render such reports of the attendance of such children and maintain such minimum curriculum standards as are required of public schools; and attendance upon such schools, if the school refuses or neglects to keep such records or to render such reports, shall not be accepted in lieu of attendance upon the public school of the district to which the child shall be assigned: Provided, that instruction in a nonpublic school shall not be regarded as meeting the requirements of the law unless the courses of instruction run concurrently with the term of the public school in the district and extend for at least as long a term. Provided, further that any child which is afflicted by mental, emotional, or physical incapacities so as to make it unlikely that such child could substantially profit by instruction given in the public schools, he or she need not be presented for enrollment upon presentation to the superintendent of city or county schools of evidence that medical, social, psychological and educational evaluation has been made showing that such child could not substantially profit by instruction in the public schools. (1955, c. 1372, art. 20, s. 1; 1956, Ex. Sess., c. 5; 1963, c. 1223, s. 6; 1969, c. 339; c. 799, s. 1; 1971, c. 846.)

Editor's Note. — For article on North Carolina school legislation, 1956, see 35 N.C.L. Rev. 1 (1956).

Indictment for Noncompliance. — For a conviction of failure to keep children in school it is necessary for the indictment to allege, and the State offer evidence tending to show, not only that the parent or guardian of the children within the described age had failed or refused to send them to the public school within the district, but also that such child or children had not been sent to attend school periodically for a period equal to the time which the public school in the district in which they reside shall be in session. State v. Johnson, 188 N.C. 591, 125 S.E. 183 (1924).

Where the indictment does not sufficiently allege the failure of the parent or guardian to send the child to another than the public school in the district, an amendment may be allowed to cure the defect. State v. Johnson, 188 N.C. 591, 125 S.E. 183 (1924).

An indictment charging a parent with unlawful and willfully failing to cause his children, between the ages of 8 and 14 years, to attend the public schools of the district of his and the children's residence, is defective in not observing the distinction that the parent, having the custody of his children, may have them attend private schools for the required period, and no conviction may be had under the charge set out in the indictment. State v. Lewis, 194 N.C. 620, 140 S.E. 434 (1927).

Burden. — Where the indictment is defective in failing to charge that a parent or guardian had also failed to send the child or children to another than the district school, and the State offers no evidence in respect to it, it is not required that the parent or guardian offer evidence to show that he had complied with the proviso of the statute; and an instruction of the court to the jury placing the burden upon the defendant to so show, is reversible error. State v. Johnson, 188 N.C. 591, 125 S.E. 183 (1924).

Parent Asserting Rights under Vaccination Statute. — Where it appeared that the defendant did everything within his power to keep his

child in school, except to waive what he believed to be his rights under former § 130-93.1 (h), so long as the defendant, in good faith, was asserting his rights as he conceived them under the statute, he was not subject to conviction under this section. State v. Miday, 263 N.C. 747, 140 S.E.2d 325 (1965).

Stated in Godwin v. Johnston County Bd. of Educ., 301 F. Supp. 1339 (E.D.N.C. 1969).

Cited in Fremont City Bd. of Educ. v. Wayne County Bd. of Educ., 259 N.C. 280, 130 S.E.2d 408 (1963).

§ 115-167. State Board of Education to make rules and regulations; method of enforcement. — It shall be the duty of the State Board of Education to formulate such rules and regulations as may be necessary for the proper enforcement of the provisions of this Article. The Board shall prescribe what shall constitute unlawful absence, what causes may constitute legitimate excuses for temporary nonattendance due to physical or mental inability to attend, and under what circumstances teachers, principals, or superintendents may excuse pupils for nonattendance due to immediate demands of the farm or the home in certain seasons of the year in the several sections of the State. It shall be the duty of all school officials to carry out such instructions from the State Board of Education, and any school official failing to carry out such instructions shall be guilty of a misdemeanor: Provided, that the compulsory attendance law herein prescribed shall not be in force in any city or county that has a higher compulsory attendance feature than that provided herein. (1955, c. 1372, art. 20, s. 2; 1963, c. 1223, s. 7.)

Cited in Horton v. Orange County Bd. of Educ., 342 F. Supp. 1244 (M.D.N.C. 1971).

§ 115-168. Attendance counselors; reports; prosecutions. — The State Superintendent of Public Instruction shall prepare such rules and procedures and furnish such blanks for teachers and other school officials as may be necessary for reporting such case of unlawful absence or lack of attendance to the attendance counselor of the respective administrative units. Such rules shall provide, among other things, for a notification in writing, to the person responsible for the nonattendance of any child, that the case is to be reported to the attendance counselor of the administrative unit unless the law is complied with immediately. Upon recommendation of the superintendent, county and city boards of education may employ attendance counselors and such counselors shall have authority to report and verify on oath the necessary criminal warrants or other documents for the prosecutions of violations of this Article: Provided, that school administrative units shall provide in their local operating budgets for travel and necessary office expense for such attendance counselors as may be employed through State and/or local funds. The State Board of Education shall determine the formula for allocating attendance counselors to the various county and city administrative units, establish their qualifications, and shall develop a salary schedule which shall be applicable to such personnel; provided that persons now employed by county and city boards of education as attendance officers shall be deemed qualified as attendance counselors under the terms of this Article, subject to the approval of said county and city boards of education; provided further, that until qualified persons become available, county and city boards of education are hereby authorized to employ as attendance counselors persons not determined by the State Board of Education to be qualified under the terms of this Article. (1955, c. 1372, art. 20, s. 3; 1957, c. 600; 1961, c. 186; 1963, c. 1223, s. 8.)

Local Modification. — Graham: 1957, c. 261.

§ 115-169. Violation of law; penalty. — Any parent, guardian or other person violating the provisions of this Article shall be guilty of a misdemeanor and upon conviction shall be fined not more than fifty dollars ($50.00) or imprisoned not more than 30 days, or both, in the discretion of the court. (1955, c. 1372, art. 20, s. 4; 1969, c. 799, s. 2.)

Local Modification. — Jackson: 1959, c. 94.

Imposition and Nonpayment of Fine Prerequisite to Prison Sentence. — Where there was nothing in the record tending to show that the court below had imposed a fine on defendant for failure to send his child to school, and by reason of his failure to pay such fine a prison sentence was imposed, a prison sentence imposed under this section was without sanction of law. State v. Miday, 263 N.C. 747, 140 S.E.2d 325 (1965).

§ 115-170. Investigation and prosecution by attendance counselor. — The school attendance counselor shall investigate all violators of the provisions of this Article. The reports of unlawful absence required to be made by teachers and principals to the attendance counselor shall, in his hands, in case of any prosecution, constitute prima facie evidence of the violation of this Article and the burden of proof shall be upon the defendant to show the lawful attendance of the child or children upon an authorized school. (1955, c. 1372, art. 20, s. 5; 1961, c. 186; 1963, c. 1223, s. 9.)

§ 115-171. Investigation as to indigency of child. — If affidavit shall be made by the parent of a child or by any other person that any child between the ages of seven and 16 years is not able to attend school by reason of necessity to work or labor for the support of itself or the support of the family, then the attendance counselor shall diligently inquire into the matter and bring it to the attention of some court allowed by law to act as a juvenile court, and said court shall proceed to find whether as a matter of fact such parents, or persons standing in loco parentis, are unable to send said child to school for the term of compulsory attendance for the reasons given. If the court shall find, after careful investigation, that the parents have made or are making bona fide effort to comply with the compulsory attendance law, and by reason of illness, lack of earning capacity, or any other cause which the court may deem valid and sufficient, are unable to send said child to school, then the court shall find and state what help is needed for the family to enable the attendance law to be complied with. The court shall transmit its findings to the director of social services of the county or city in which the case may arise for such social services officer's consideration and action. (1955, c. 1372, art. 20, s. 6; 1961, c. 186; 1963, c. 1223, s. 10; 1969, c. 982.)

§ 115-172. Deaf children and blind children to attend school; age limits; minimum attendance. — Every deaf child and every blind child between the ages of six and 18 years of sound mind in North Carolina who shall be qualified for admission into a State school for the deaf or the blind shall attend a school that has an approved program for the deaf or the blind, or in the case of a blind child, such child may attend a public school, for a term of not less than nine months each year. Parents, guardians, or custodians of every such blind or deaf child between the ages of six and 18 years shall send, or cause to be sent, such child to some school for the instruction of the blind or deaf or public school as herein provided. As to any deaf child, or any blind child not attending a public school as herein provided, the superintendent of any school for the blind or deaf may exempt any such child from attendance at any session or during any year, and may discharge from his custody any such blind or deaf child whenever such discharge seems necessary or proper. Such discharge or exemption shall be reviewed by the board of directors upon petition by the parent, guardian, or other interested person or the child who has been exempted or discharged;

provided, however, that such board shall not be required to review such discharge or exemption more than once during each calendar year. Whenever a blind or deaf child shall reach the age of 18 years and is still unable to become self-supporting because of his defects, such child shall continue in said school until he reaches the age of 21, unless he becomes capable of self-support at an earlier date. (1955, c. 1372, art. 20, s. 7; 1969, c. 749, s. 1.)

§ 115-173. Parents, etc., failing to enroll deaf child in school guilty of misdemeanor; provisos. — The parents, guardians, or custodians of any deaf child or children between the ages of six and 18 years failing to enroll such deaf child or children in some school for instruction as provided herein, shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned, at the discretion of the court. Provided, that this section shall not apply to or be enforced against the parent, guardian, or custodian of any deaf child until such time as the superintendent of any school for the instruction of the deaf shall in his discretion serve written notice on such parent, guardian, or custodian, directing that such child be sent to the institution, advising such parents, guardians, or custodians of the legal requirements of this section and provided, further, that the willful failure of such parent, guardian, or custodian shall constitute a continuing offense and shall not be barred by the statute of limitations. (1955, c. 1372, art. 20, s. 8; 1969, c. 749, s. 1.)

§ 115-174. Parents, etc., failing to send blind child to school guilty of misdemeanor; provisos. — The parents, guardians, or custodians of any blind child or children between the ages of six and 18 years failing to send such child or children to some school for the instruction of the blind or public school shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned, at the discretion of the court. This section shall not be enforced against the parents, guardians, or custodians of any blind child until such time as the superintendent of some school for the instruction of the blind shall in his discretion serve written notice on such parents, guardians, or custodians directing that such child be sent to the said school or to a public school, advising such parents, guardians, or custodians of the legal requirements of this section and provided, further, that the willful failure of such parents, guardians, or custodians shall constitute a continuing offense and shall not be barred by the statute of limitations. The authorities of the Governor Morehead School shall not be compelled to retain in their custody or under their instruction any incorrigible person or persons of confirmed immoral habits. (1955, c. 1372, art. 20, s. 9; 1969, c. 749, s. 1.)

§ 115-175. School superintendent to report blind and deaf children. — It shall be the duty of the county and city school superintendents to report the names and addresses of parents, guardians, or custodians of any deaf or blind children residing within their respective school administrative units to the superintendent of the institution provided for each. Such report also shall be made to the Department of Public Instruction. (1955, c. 1372, art. 20, s. 10; 1969, c. 749, s. 1.)

ARTICLE 20A.

Child Health Program.

§ 115-175.1. Expenditures. — Not less than ninety percent (90%) of the expenditures from the appropriation for each year to the State Board of Education under the Nine Months School Fund for the Child Health Program shall be expended through the Child Health Program of the State Board of

Education for the diagnosis and correction of chronic, remediable physical defects of public school children, in the following manner:

(1) Upon discovery of a chronic, remediable defect, if it appears that the expenditure of school health funds will be required to provide spectacles, prosthesis, or other correction, the appropriate school official shall forthwith notify the county director of social services of the county in which the child resides. Thereupon, the director of social services shall make such investigation as necessary and only upon his certification of financial need shall funds be expended for this purpose: Provided, that in cases of minor dental defects involving expenditures not in excess of ten dollars ($10.00), school and health department personnel may determine financial need.

(2) Child Health Program funds as defined in this section shall be expended in accordance with a uniform statewide schedule of fees and costs, and only to provide spectacles, prosthesis, and other correction of chronic, remediable defects of public school children: Provided, that an amount not in excess of ten percent (10%) of the appropriation for this program for each year may be expended for case finding, health education, and intensive follow-up services. (1961, c. 833, s. 15; 1965, c. 356; 1969, c. 982.)

Article 21.

Assignment and Enrollment of Pupils.

§ 115-176. Authority to provide for assignment and enrollment of pupils; rules and regulations. — Each county and city board of education is hereby authorized and directed to provide for the assignment to a public school of each child residing within the administrative unit who is qualified under the laws of this State for admission to a public school. Except as otherwise provided in this Article, the authority of each board of education in the matter of assignment of children to the public schools shall be full and complete, and its decision as to the assignment of any child to any school shall be final. A child residing in one administrative unit may be assigned either with or without the payment of tuition to a public school located in another administrative unit upon such terms and conditions as may be agreed in writing between the boards of education of the administrative units involved and entered upon the official records of such boards. No child shall be enrolled in or permitted to attend any public school other than the public school to which the child has been assigned by the appropriate board of education. In exercising the authority conferred by this section, each county and city board of education shall make assignments of pupils to public schools so as to provide for the orderly and efficient administration of the public schools, and provide for the effective instruction, health, safety, and general welfare of the pupils. Each board of education may adopt such reasonable rules and regulations as in the opinion of the board are necessary in the administration of this Article. (1955, c. 366, s. 1; 1956, Ex. Sess., c. 7, s. 1.)

Editor's Note. — For comment on this article, see 33 N.C.L. Rev. 552 (1955). For article on North Carolina school legislation, 1956, see 35 N.C.L. Rev. 1 (1956).

Constitutionality. — The standards set forth in § 115-177 as it stood before the 1956 amendment thereto, which standards were the same as those now set forth in the next to the last sentence of this section, were not on their face insufficient to sustain the exercise of the administrative power conferrred. Carson v. Warlick, 238 F.2d 724 (4th Cir. 1956).

Although this Article has been declared facially constitutional, when such a statute is applied to discriminate against negro pupils, it is given an unconstitutional application. Criteria may not be used to screen and deny negro applicants to a particular school if they are not used in the

same manner to screen and deny white applicants similarly situated. Felder v. Harnett County Bd. of Educ., 349 F.2d 366 (4th Cir. 1965).

History of Article. — See In re Application for Reassignment, 247 N.C. 413, 101 S.E.2d 359 (1958).

Authority for Assignment and Enrollment of Pupils Is Vested Solely in Local Boards. — While State officials are given broad general powers over the public school system, specific authority for the assignment and enrollment of pupils in all city and county administrative units throughout the State is vested solely in county and city boards of education. There is no provision giving the State officials any authority or control whatever over local school officials relating to the enrollment and assignment of pupils in the public schools. Jeffers v. Whitley, 165 F. Supp. 951 (M.D.N.C. 1958); McKissick v. Durham City Bd. of Educ., 176 F. Supp. 3 (M.D.N.C. 1959).

The duty to recognize the constitutional rights of pupils rests primarily upon the school board, and there it should be placed by an appropriate order of the court, for the United States district court has a secondary duty of enforcement of individual rights and of supervision of the steps taken by the school board to bring itself within the requirements of the law. Jeffers v. Whitley, 309 F.2d 621 (4th Cir. 1962).

Power of Local Boards Is Only Subject to Standards and Limitations of This Article. — The State has entrusted to the county and city boards of education the "full and complete" power to assign and reassign each child residing within its unit to a public school, subject only to the standards and limitations prescribed by the Pupil Assignment Law, including the power of the courts of North Carolina to hear de novo an appeal from the final order of the board and, thereupon, to enter the appropriate order. In re Varner, 266 N.C. 409, 146 S.E.2d 401 (1966).

This Article imposes upon the school board, and upon the courts on appeal from it, a solemn duty, for in applying this Article to the application for the reassignment of a child, the board is dealing with an asset of the State which cannot be valued in the terms of the market place. In re Varner, 266 N.C. 409, 146 S.E.2d 401 (1966).

Which Board May Not Delegate. — The Pupil Assignment Law does not authorize the school board to abdicate or delegate its duty to exercise the power so entrusted to it for the best interests of the applying child. In re Varner, 266 N.C. 409, 146 S.E.2d 401 (1966).

The school board is endowed by this section with "full and complete" and "final" authority to assign students to whatever schools the board chooses to assign them. The board may not shift this statutory burden to others. Swann v. Charlotte-Mecklenburg Bd. of Educ., 306 F. Supp. 1299 (W.D.N.C. 1969).

Hence, Board May Not Transfer Its Power to Federal Employee. — The school board may not, in the hope of receiving money for its school, shut its eyes to the mandate of the statute. It may not, by contract or otherwise, transfer its power to an employee of the federal government, or bind itself to exercise it as he may direct, or in any other manner than that provided in this Article, or for any purpose other than that for which the State conferred the power upon it. In re Varner, 266 N.C. 409, 146 S.E.2d 401 (1966).

It is the local school board, and not the court, which has the duty to assign pupils and operate the schools, subject to the requirements of the Constitution. It is the court's duty to assess any pupil assignment plan in terms of the Constitution which is still the supreme law of the land. Swann v. Charlotte-Mecklenburg Bd. of Educ., 300 F. Supp. 1358 (W.D.N.C. 1969).

Assumption That State Officials Will Obey Law. — Until there has been a failure of the administrative process, it should be assumed in a federal court that State officials will obey the law when their official action is properly invoked. Jeffers v. Whitley, 309 F.2d 621 (4th Cir. 1962).

Where the school board has represented to the court that standards and criteria of assignment will be applied without regard to the race of the applicant, until it can be demonstrated that this representation is false, there is no ground for complaint. Wheeler v. Durham City Bd. of Educ., 210 F. Supp. 839 (M.D.N.C. 1962).

When, however, administrators have displayed a firm purpose to circumvent the law, when they have consistently employed the administrative processes to frustrate enjoyment of legal rights, there is no longer room for indulgence of an assumption that the administrative proceedings provide an appropriate method by which recognition and enforcement of those rights may be obtained. Jeffers v. Whitley, 309 F.2d 621 (4th Cir. 1962).

Assignments on a racial basis are neither authorized nor contemplated by the permissive Pupil Enrollment Act. Jeffers v. Whitley, 309 F.2d 621 (4th Cir. 1962).

And Such Assignments Are Unconstitutional.—It is an unconstitutional administration of the North Carolina Pupil Enrollment Act to assign pupils to schools according to racial factors. Wheeler v. Durham City Bd. of Educ., 309 F.2d 630 (4th Cir. 1962).

Voluntary Separation of Races. — Though a voluntary separation of the races in schools is uncondemned by any provision of the Constitution, its legality is dependent upon the volition of each of the pupils. If a reasonable attempt to exercise a pupil's individual volition is thwarted by official coercion or compulsion, the organization of the schools, to that extent, comes into plain conflict with the constitutional require-

ment. Jeffers v. Whitley, 309 F.2d 621 (4th Cir. 1962).

If a voluntary system is to justify its name, it must, at reasonable intervals, offer to the pupils reasonable alternatives, so that, generally, those who wish to do so may attend a school with members of the other race. Jeffers v. Whitley, 309 F.2d 621 (4th Cir. 1962).

Other Factors Than Mixture of Races May Be Considered. — There is no constitutional requirement that the school board act with the conscious purpose of achieving the maximum mixture of races in the school population. The Constitution permits the board to consider natural geographic boundaries, accessibility of particular schools, and many other factors which are unrelated to race. So long as the boundaries are not drawn for the purpose of maintaining racial segregation, the school board is under no constitutional requirement that it effectively and completely counteract all of the effects of segregated housing patterns. Swann v. Charlotte-Mecklenburg Bd. of Educ., 369 F.2d 29 (4th Cir. 1966).

Duty to Desegregate Schools. — School officials have the continuing duty to take whatever action may be necessary to create a unitary, nonracial system. Swann v. Charlotte-Mecklenburg Bd. of Educ., 300 F. Supp. 1358 (W.D.N.C. 1969).

The school board has a duty to promote acceptance of and compliance with the law. Swann v. Charlotte-Mecklenburg Bd. of Educ., 306 F. Supp. 1299 (W.D.N.C. 1969).

School boards are clearly charged with the affirmative duty to desegregate schools "now" by positive measures. Swann v. Charlotte-Mecklenburg Bd. of Educ., 300 F. Supp. 1358 (W.D.N.C. 1969).

School boards operating state-compelled racially dual systems are clearly charged with the affirmative duty to take whatever steps might be necessary to convert to a unitary system in which racial discrimination will be eliminated root and branch. Swann v. Charlotte-Mecklenburg Bd. of Educ., 300 F. Supp. 1358 (W.D.N.C. 1969).

The duty of the local school boards is not simply a negative duty to refrain from active legal racial discrimination, but a duty to act positively to fashion affirmatively a school system as free as possible from the lasting effects of historical apartheid. Swann v. Charlotte-Mecklenburg Bd. of Educ., 300 F. Supp. 1358 (W.D.N.C. 1969).

The school board has an affirmative duty to promote faculty desegregation and desegregation of pupils, and to deal with the problem of the all-black schools. Swann v. Charlotte-Mecklenburg Bd. of Educ., 300 F. Supp. 1358 (W.D.N.C. 1969).

The board must fashion steps which promise realistically to convert promptly to a system without a "white" school and a "negro" school but just schools. Swann v. Charlotte-Mecklenburg Bd. of Educ., 306 F. Supp. 1299 (W.D.N.C. 1969).

De jure segregation was outlawed by the two decisions of the United States Supreme Court in Brown v. Board of Educ., 347 U.S. 483, 74 S. Ct. 686, 98 L. Ed. 873, 38 A.L.R.2d 1180 (1954) and 349 U.S. 294, 75 S. Ct. 753, 99 L. Ed. 1083 (1955). Swann v. Charlotte-Mecklenburg Bd. of Educ., 300 F. Supp. 1358 (W.D.N.C. 1969).

In the field of public education the doctrine of "separate but equal" has no place. Separate educational facilities are inherently unequal. Swann v. Charlotte-Mecklenburg Bd. of Educ., 300 F. Supp. 1358 (W.D.N.C. 1969).

"Freedom of Choice". — In desegregating a racially dual school system a plan utilizing "freedom of choice" is not an end in itself. "Freedom of choice" is not a sacred talisman; it is only a means to a constitutionally required end—the abolition of the system of segregation and its effects. Swann v. Charlotte-Mecklenburg Bd. of Educ., 300 F. Supp. 1358 (W.D.N.C. 1969).

The neighborhood school theory has no standing to override the Constitution. Swann v. Charlotte-Mecklenburg Bd. of Educ., 300 F. Supp. 1358 (W.D.N.C. 1969).

The neighborhood school theory was repudiated by the 1955 General Assembly and still stands repudiated in the Pupil Assignment Act of 1955-56. Swann v. Charlotte-Mecklenburg Bd. of Educ., 300 F. Supp. 1358 (W.D.N.C. 1969).

The neighborhood school concept never prevented statutory racial segregation; it may not now be validly used to perpetuate segregation. Swann v. Charlotte-Mecklenburg Bd. of Educ., 300 F. Supp. 1358 (W.D.N.C. 1969).

The quality of public education should not depend on the economic or racial accident of the neighborhood in which a child's parents have chosen to live — or find they must live — nor on the color of his skin. Swann v. Charlotte-Mecklenburg Bd. of Educ., 300 F. Supp. 1358 (W.D.N.C. 1969).

Where pupils live must not control where they are assigned to school, if some other approach is necessary in order to eliminate racial segregation. Swann v. Charlotte-Mecklenburg Bd. of Educ., 306 F. Supp. 1299 (W.D.N.C. 1969).

Desegregation Plan — Burden on School Board. — The burden on a school board today is to come forward with a school desegregation plan that promises realistically to work, and promises realistically to work now. Swann v. Charlotte-Mecklenburg Bd. of Educ., 300 F. Supp. 1358 (W.D.N.C. 1969).

Same — Purpose. — The transition to a unitary, nonracial system of public education was and is the ultimate end to be brought about by a school desegregation plan. Swann v. Charlotte-Mecklenburg Bd. of Educ., 300 F. Supp. 1358 (W.D.N.C. 1969).

Same — Methods of Desegregation. — In developing a desegregation plan, the school board

is free to consider all known ways of desegregation, including bussing; pairing of grades or of schools; enlargement and realignment of existing zones; freedom of transfer coupled with free transportation for those who elect to abandon de facto segregated schools; and any other methods calculated to establish education as a public program operated according to its own independent standards, and unhampered and uncontrolled by the race of the faculty or pupils or the temporary housing patterns of the community. Swann v. Charlotte-Mecklenburg Bd. of Educ., 300 F. Supp. 1358 (W.D.N.C. 1969).

Same—Rezoning. — A school desegregation plan should try to avoid any rezoning which tends to perpetuate segregated pupil assignment. Swann v. Charlotte-Mecklenburg Bd. of Educ., 300 F. Supp. 1358 (W.D.N.C. 1969).

Administrative Transfers. — The board should retain its statutory power and duty to make assignments of pupils for administrative reasons, with or without requests from parents. Administrative transfers shall not be made if the result of such transfers is to restore or increase the degree of segregation in either the transferor or the transferee school. Swann v. Charlotte-Mecklenburg Bd. of Educ., 311 F. Supp. 265 (W.D.N.C. 1970).

Dual System of Attendance Areas. — Where the school board maintained a dual system of attendance areas for elementary students based on race, the constitutional rights of negro applicants were offended. Wheeler v. Durham City Bd. of Educ., 196 F. Supp. 71 (M.D.N.C. 1961).

Even though in most instances a dual system of attendance areas resulted in children, both white and colored, being assigned to elementary schools nearest their homes, this did not remove the constitutional barrier against the maintenance of dual attendance areas, and negro plaintiffs were entitled to have such dual attendance areas abolished. Wheeler v. Durham City Bd. of Educ., 196 F. Supp. 71 (M.D.N.C. 1961).

Assignment to School outside Administrative Unit. — This section provided for assignment en masse upon the basis of residence to a school outside the administrative unit if the boards agree in writing, without notice, or the approval of the child or its parents, and without hearing, and no child shall be enrolled in or permitted to attend any other public school. In re Hayes, 261 N.C. 616, 135 S.E.2d 645 (1964).

The legislature contemplated agreements between boards acting within the framework of the statute and free to accomplish its purpose — the assignment of the individual child to the school where his or her "best interest" would be served without disruption of that school. In re Varner, 266 N.C. 409, 146 S.E.2d 401 (1966).

The board of one administrative unit cannot assign a child to a school in another administrative unit without the consent of the board of the other unit. In re Varner, 266 N.C. 409, 146 S.E.2d 401 (1966).

Under the Pupil Assignment Law, as amended in 1956, the board of education of one city or county administrative unit may not permit to be enrolled in one of its schools a child who resides in the territory of another unit solely upon its own willingness to do so, plus the desire of the child or its parents to attend that school. Nothing else appearing, the assent of the board of the unit in which the child resides must be obtained. In re Varner, 266 N.C. 409, 146 S.E.2d 401 (1966).

The requirement that a child residing in one unit may not be placed in school in another unit without the assent of his resident unit's board is a protection to each unit against raids upon its student body by another unit so as to gain additional teacher allotment by the State on account of increased enrollment, or so as to gain accomplished athletes, or for any other purpose. In re Varner, 266 N.C. 409, 146 S.E.2d 401 (1966).

It is not within the fair intendment of this law that a board may enter into an agreement with some other agency or person that, come what may and regardless of the welfare of the applying child, the board will never agree to assign any child to any school in another county. In re Varner, 266 N.C. 409, 146 S.E.2d 401 (1966).

Assignment of Pupils outside County of Their Residence. — Nowhere in this Article is there any authority to assign pupils outside the county of their residence. The assignment by a county board of education of the plaintiffs to the schools in another county was without authority and of no effect. Plaintiffs have a legal right to the enjoyment of the opportunities in the county of their residence and the administrative board cannot justify requiring their resort to opportunities elsewhere. Griffith v. Board of Educ., 186 F. Supp. 511 (W.D.N.C. 1960).

Administrative Remedy Must Be Exhausted. — The administrative remedy provided by this Article for persons who feel that they have not been assigned to the schools that they are entitled to attend must be exhausted before the federal courts will give relief. Carson v. Board of Educ., 227 F.2d 789 (4th Cir. 1955); Carson v. Warlick, 238 F.2d 724 (4th Cir. 1956); Holt v. Raleigh City Bd. of Educ., 164 F. Supp. 853 (E.D.N.C. 1958); Jeffers v. Whitley, 165 F. Supp. 951 (M.D.N.C. 1958); Covington v. Edwards, 264 F.2d 780 (4th Cir. 1959).

A contention that even if the Assignment and Enrollment of Pupils Act is constitutional it need not be complied with in the instant case because the provisions of the act were being unconstitutionally applied was completely untenable in view of the fact that there was no allegation that any of the plaintiffs ever sought to comply with the provisions of the act. Not until each of the plaintiffs had applied to the county board of education as individuals, and not as a class, for reassignment, and had failed to be given the relief

sought, should the court be asked to interfere in school administration. Covington v. Edwards, 165 F. Supp. 957 (M.D.N.C. 1958).

The administrative remedies provided under this Article must be exhausted before the courts of the United States will grant injunctive relief, and rights must be asserted as individuals, not as a class or group. McKissick v. Durham City Bd. of Educ., 176 F. Supp. 3 (M.D.N.C. 1959); Jeffers v. Whitley, 197 F. Supp. 84 (M.D.N.C. 1961), aff'd in part and rev'd in part in 309 F.2d 621 (4th Cir. 1962).

The fact that administrative remedies provided under the State statutes, if fairly administered, must be exhausted before courts of the United States will grant injunctive relief, and the fact that such rights must be asserted as individuals, and not as a class or group, is no longer subject to debate. Wheeler v. Durham City Bd. of Educ., 196 F. Supp. 71 (M.D.N.C. 1961).

The federal court is not authorized to act until the administrative remedies have been properly sought and it is shown that the statute is being unconstitutionally administered. After the hearing and final decision thereon, if one is not satisfied, and can show that he has been discriminated against because of his race, he may then apply to the federal court for relief. Morrow v. Mecklenburg County Bd. of Educ., 195 F. Supp. 109 (W.D.N.C. 1961).

Unless Such Remedy Perpetrates Discrimination. — When an administrative remedy respecting school assignments and transfers, however fair upon its face, has, in practice, been employed principally as a means of perpetration of discrimination and of denial of constitutionally protected rights, it is consistently held inadequate. A remedy so administered need not be exhausted or pursued before resort to the courts for enforcement of the protected rights. Jeffers v. Whitley, 309 F.2d 621 (4th Cir. 1962).

Hence, school boards are required to reasonably administer the assignment statutes if pupils are to be required to exhaust their administrative remedies under this Article before applying to the courts for relief. Wheeler v. Durham City Bd. of Educ., 196 F. Supp. 71 (M.D.N.C. 1961).

Judicial Relief. — On behalf of others similarly situated negro plaintiffs are not entitled to an order requiring the school board to effect a general intermixture of the races in the schools, but they are entitled to an order enjoining the school board from refusing admission to any school of any pupil because of the pupil's race. Jeffers v. Whitley, 309 F.2d 621 (4th Cir. 1962).

For a statement of judicial relief that must be granted to school children who have been initially assigned on a racial basis, see Jeffers v. Whitley, 309 F.2d 621 (4th Cir. 1962).

State officials are not indispensable and necessary parties to an action to compel desegregation of schools in a county. Jeffers v. Whitley, 165 F. Supp. 951 (M.D.N.C. 1958).

Members of the State Board of Education and the State Superintendent of Public Instruction are neither necessary nor proper parties in actions involving the assignment and enrollment of pupils under this Article. Covington v. Edwards, 165 F. Supp. 957 (M.D.N.C. 1958).

Members of the North Carolina State Board of Education are neither necessary nor proper parties to an action against a city board of education. McKissick v. Durham City Bd. of Educ., 176 F. Supp. 3 (M.D.N.C. 1959).

When Class Action Proper. — Where each plaintiff was rejected for the same or similar reasons and each sought in the application the identical relief, having exhausted their administrative remedies they have the right under the law to maintain a class action in the federal courts in behalf of themselves and others likewise qualified. Griffith v. Board of Educ., 186 F. Supp. 511 (W.D.N.C. 1960).

Burden of Proof. — The burden of proof is on the plaintiffs to establish by a preponderance of the evidence that they have exhausted their administrative remedies before applying to the federal courts for injunctive relief. McKissick v. Durham City Bd. of Educ., 176 F. Supp. 3 (M.D.N.C. 1959).

The burden is upon plaintiffs seeking a transfer to establish by a preponderance of the evidence that they were denied a constitutional right because of their race. Jeffers v. Whitley, 197 F. Supp. 84 (M.D.N.C. 1961), aff'd in part and rev'd in part in 309 F.2d 621 (4th Cir. 1962).

Injunction. — Board of Education was enjoined from applying racial considerations to any applications for reassignment under the North Carolina Pupils Enrollment Act. Chance v. Board of Educ., 224 F. Supp. 472 (E.D.N.C. 1963).

Applied in Fremont City Bd. of Educ. v. Wayne County Bd. of Educ., 259 N.C. 280, 130 S.E.2d 408 (1963).

Quoted in Joyner v. McDowell County Bd. of Educ., 244 N.C. 164, 92 S.E.2d 724 (1956).

Stated in Fries v. Rowan County Bd. of Educ., 7 N.C. App. 341, 172 S.E.2d 75 (1970).

Cited in Holt v. Raleigh City Bd. of Educ., 265 F.2d 95 (4th Cir. 1959); Huggins v. Wake County Bd. of Educ., 272 N.C. 33, 157 S.E.2d 703 (1967).

§ 115-176.1. Assignment of pupils based on race, creed, color or national origin prohibited. — No person shall be refused admission into or be excluded from any public school in this State on account of race, creed, color or national origin. No school attendance district or zone shall be drawn for the purpose of

segregating persons of various races, creeds, colors or national origins from the community.

Where administrative units have divided the geographic area into attendance districts or zones, pupils shall be assigned to schools within such attendance districts; provided, however, that the board of education of an administrative unit may assign any pupil to a school outside of such attendance district or zone in order that such pupil may attend a school of a specialized kind including but not limited to a vocational school or school operated for, or operating programs for, pupils mentally or physically handicapped, or for any other reason which the board of education in its sole discretion deems sufficient. No student shall be assigned or compelled to attend any school on account of race, creed, color or national origin, or for the purpose of creating a balance or ratio of race, religion or national origins. Involuntary bussing of students in contravention of this Article is prohibited, and public funds shall not be used for any such bussing.

The provisions of this Article shall not apply to a temporary assignment due to the unsuitability of a school for its intended purpose nor to any assignment or transfer necessitated by overcrowded conditions or other circumstances which, in the sole discretion of the school board, require assignment or reassignment.

The provisions of this Article shall not apply to an application for the assignment or reassignment by the parent, guardian or person standing in loco parentis of any pupil or to any assignment made pursuant to a choice made by any pupil who is eligible to make such choice pursuant to the provisions of a freedom of choice plan voluntarily adopted by the board of education of an administrative unit. (1969, c. 1274.)

This section cannot be interpreted to frustrate the constitutional prohibition against segregated schools. Swann v. Charlotte-Mecklenburg Bd. of Educ., 312 F. Supp. 503 (W.D.N.C. 1970).

This section is unconstitutional in part. Swann v. Charlotte-Mecklenburg Bd. of Educ., 312 F. Supp. 503 (W.D.N.C. 1970).

To the extent that this section may interfere with the board's performance of its affirmative constitutional duty to establish a unitary system, it is invalid. Swann v. Charlotte-Mecklenburg Bd. of Educ., 312 F. Supp. 503 (W.D.N.C. 1970).

There is nothing unconstitutional in the first paragraph of this section. Swann v. Charlotte-Mecklenburg Bd. of Educ., 312 F. Supp. 503 (W.D.N.C. 1970).

Or in the First Sentence of the Second Paragraph. — The first sentence of the second paragraph allows school boards to establish a geographically zoned neighborhood school system, but it does not require them to do so. Consequently, this sentence does not prevent the boards from complying with their constitutional duty in circumstances where zoning and neighborhood school plans may not result in a unitary system. The clause in the first sentence permitting assignment for "any other reason" in the board's "sole discretion" means simply that the school boards may assign outside the neighborhood school zone for noninvidious, administrative reasons. So read, it presents no constitutional difficulty. Swann v. Charlotte-Mecklenburg Bd. of Educ., 312 F. Supp. 503 (W.D.N.C. 1970).

The second and third sentences of the second paragraph are unconstitutional. They plainly prohibit school boards from assigning, compelling, or involuntarily bussing students on account of race, or in order to racially "balance" the school system. Swann v. Charlotte-Mecklenburg Bd. of Educ., 312 F. Supp. 503 (W.D.N.C. 1970).

The Constitution is not color-blind with respect to the affirmative duty to establish and operate a unitary school system. A flat prohibition against assignment by race would, as a practical matter, prevent school boards from altering existing dual systems. Consequently, the statute clearly contravenes the Supreme Court's direction that boards must take steps adequate to abolish dual systems. Swann v. Charlotte-Mecklenburg Bd. of Educ., 312 F. Supp. 503 (W.D.N.C. 1970).

Because any method of school desegregation involves selection of zones and transfer and assignment of pupils by race, a flat prohibition against racial "balance" violates the equal protection clause of the Fourteenth Amendment. Swann v. Charlotte-Mecklenburg Bd. of Educ., 312 F. Supp. 503 (W.D.N.C. 1970).

North Carolina may not validly enact laws that prevent the utilization of any reasonable method otherwise available to establish unitary school systems. Its effort to do so in the second paragraph of this section is struck down by the equal protection clause of the Fourteenth

Amendment and the supremacy clause (Article VI, clause 2 of the United States Constitution). Swann v. Charlotte-Mecklenburg Bd. of Educ., 312 F. Supp. 503 (W.D.N.C. 1970).

This section's prohibition against "involuntary bussing" violates the equal protection clause. Bussing may not be necessary to eliminate a dual system and establish a unitary one in a given case, but the legislature went too far when it undertook to prohibit its use in all factual contexts. To say that bussing shall not be resorted to unless unavoidable is a valid expression of State policy, but to flatly prohibit it regardless of cost, extent and all other factors — including willingness of a school board to experiment — contravenes the implicit mandate of Green v. County School Bd., 391 U.S. 430, 88 S. Ct. 1689, 20 L. Ed. 2d 716 (1968) that all reasonable methods be available to implement a unitary system. Swann v. Charlotte-Mecklenburg Bd. of Educ., 312 F. Supp. 503 (W.D.N.C. 1970).

To forbid all assignments made on the basis of race would deprive school authorities of the one tool absolutely essential to fulfillment of their constitutional obligation to eliminate existing dual school systems. North Carolina State Bd. of Educ. v. Swann, 402 U.S. 1, 91 S. Ct. 1284, 28 L. Ed. 2d 554 (1971).

The flat prohibition against assignment of students for the purpose of creating a racial balance must inevitably conflict with the duty of school authorities to disestablish dual school systems. North Carolina State Bd. of Educ. v. Swann, 402 U.S. 1, 91 S. Ct. 1284, 28 L. Ed. 2d 554 (1971).

An absolute prohibition against use of ratios—even as a starting point — contravenes the implicit command of Green v. County School Bd., 391 U.S. 430, 88 S. Ct. 1689, 20 L. Ed. 2d 716 (1968), that all reasonable methods be available to formulate an effective remedy. North Carolina State Bd. of Educ. v. Swann, 402 U.S. 1, 91 S. Ct. 1284, 28 L. Ed. 2d 554 (1971).

An absolute prohibition against transportation of students assigned on the basis of race, "or for the purpose of creating a balance or ratio," will hamper the ability of local authorities to effectively remedy constitutional violations. North Carolina State Bd. of Educ. v. Swann, 402 U.S. 1, 91 S. Ct 1284, 28 L. Ed. 2d 554 (1971).

Thus, Section Is No Obstacle to Desegregation Plan Involving Bussing. — This State's anti-bussing law does not present an obstacle to a school desegregation plan involving bussing, for those provisions of this section in conflict with the plan have been declared unconstitutional. Swann v. Charlotte-Mecklenburg Bd. of Educ., 431 F.2d 138 (4th Cir. 1970).

The Third Paragraph Is Constitutional. — The third paragraph of this section merely allows the school board noninvidious discretion to assign students to schools for valid administrative reasons. It does not relate to race at all and, so read, is constitutional. Swann v. Charlotte-Mecklenburg Bd. of Educ., 312 F. Supp. 503 (W.D.N.C. 1970).

As Is the Fourth Paragraph. — The fourth paragraph of this section relieves school boards from compliance with the statute where they are implementing voluntarily adopted freedom-of-choice plans within their systems. It does not require the boards to adopt freedom of choice in any particular situation, but leaves them free to comply with their constitutional duty by any effective means available, including, where it is appropriate, freedom of choice. So interpreted, the paragraph is constitutional. Swann v. Charlotte-Mecklenburg Bd. of Educ., 312 F. Supp. 503 (W.D.N.C. 1970).

Race Must Be Considered. — Just as the race of students must be considered in determining whether a constitutional violation has occurred, so also must race be considered in formulating a remedy. North Carolina State Bd. of Educ. v. Swann, 402 U.S. 1, 91 S. Ct. 1284, 28 L. Ed. 2d 554 (1971).

A requirement that school assignment plans be "color-blind," against the background of segregation, would render illusory the promise of Brown v. Board of Educ., 347 U.S. 483, 74 S. Ct. 686, 98 L. Ed. 873 (1954). North Carolina State Bd. of Educ. v. Swann, 402 U.S. 1, 91 S. Ct. 1284, 28 L. Ed. 2d 554 (1971).

The Constitution does not compel any particular degree of racial balance or mixing, but when past and continuing constitutional violations are found, some ratios are likely to be useful starting points in shaping a remedy. North Carolina State Bd. of Educ. v. Swann, 402 U.S. 1, 91 S. Ct. 1284, 28 L. Ed. 2d 554 (1971).

School authorities have wide discretion in formulating school policy, and as a matter of educational policy school authorities may well conclude that some kind of racial balance in the schools is desirable quite apart from any constitutional requirements. North Carolina State Bd. of Educ. v. Swann, 402 U.S. 1, 91 S. Ct. 1284, 28 L. Ed. 2d 554 (1971).

Cited in Fries v. Rowan County Bd. of Educ., 7 N.C. App. 341, 172 S.E.2d 75 (1970).

§ 115-177. Methods of giving notice in making assignments of pupils. — In exercising the authority conferred by G.S. 115-176, each county or city board of education may, in making assignments of pupils, give individual written notice of assignment, on each pupil's report card or by written notice by any other feasible means, to the parent or guardian of each child or the person standing

in loco parentis to the child, or may give notice of assignment of groups or categories of pupils by publication at least two times in some newspaper having general circulation in the administrative unit. (1955, c. 366, s. 2; 1956, Ex. Sess., c. 7, s. 2.)

Good Faith Required. — Utmost good faith is required on the part of public officials and the court should never condone dilatory practices or schemes designed to deny any citizen of his constitutional rights. McKissick v. Durham City Bd. of Educ., 176 F. Supp. 3 (M.D.N.C. 1959).

And Reasonable Administration. — Although a school board technically complied with this section by giving notice of initial assignments by publication of notice two times in a local newspaper, but so late as to make it practically impossible for pupils desiring reassignment to pursue their administrative remedies prior to the opening of school, a reasonable administration is required if pupils are to be required to exhaust their administrative remedies before applying to the courts for relief. Wheeler v. Durham City Bd. of Educ., 196 F. Supp. 71 (M.D.N.C. 1961).

Applied in Morrow v. Mecklenburg County Bd. of Educ., 195 F. Supp. 109 (W.D.N.C. 1961).

Cited in Holt v. Raleigh City Bd. of Educ., 164 F. Supp. 853 (E.D.N.C. 1958); Jeffers v. Whitley, 165 F. Supp. 951 (M.D.N.C. 1958); Huggins v. Wake County Bd. of Educ., 272 N.C. 33, 157 S.E.2d 703 (1967).

§ 115-178. Application for reassignment; notice of disapproval; hearing before board. — The parent or guardian of any child, or the person standing in loco parentis to any child, who is dissatisfied with the assignment made by a board of education may, within 10 days after notification of the assignment, or the last publication thereof, apply in writing to the board of education for the reassignment of the child to a different public school. Application for reassignment shall be made on forms prescribed by the board of education pursuant to rules and regulations adopted by the board of education. If the application for reassignment is disapproved, the board of education shall give notice to the applicant by registered mail, and the applicant may within five days after receipt of such notice apply to the board for a hearing, and shall be entitled to a prompt and fair hearing on the question of reassignment of such child to a different school. A majority of the board shall be a quorum for the purpose of holding such hearing and passing upon application for reassignment, and the decision of a majority of the members present at the hearing shall be the decision of the board. If, at the hearing, the board shall find that the child is entitled to be reassigned to such school, or if the board shall find that the reassignment of the child to such school will be for the the best interests of the child, and will not interfere with the proper administration of the school, or with the proper instruction of the pupils there enrolled, and will not endanger the health or safety of the children there enrolled, the board shall direct that the child be reassigned to and admitted to such school. The board shall render prompt decision upon the hearing, and notice of the decision shall be given to the applicant by registered mail. (1955, c. 366, s. 3; 1956, Ex. Sess., c. 7, s. 3.)

Cross Reference. — See note to § 115-176.

The combination of investigatory and quasi-judicial powers is established practice generally approved by the courts and subject to judicial review in case of abuse. In the operation of the public schools, such an arrangement is well-nigh essential and the North Carolina statute implies that both functions shall be exercised by the boards of education. Holt v. Raleigh City Bd. of Educ., 265 F.2d 95 (4th Cir. 1959).

The provisions of this section place the authority in the county boards of education to make the assignment and enrollment of pupils and contain no direction for the participation of the State Board of Education in these matters. A motion to amend the complaint to join these officials as additional defendants was denied in the instant case. Covington v. Edwards, 264 F.2d 780 (4th Cir. 1959).

Reassignment Is Made on Individual Basis. — Reassignment is in the nature of a special case and made on an individual student basis, upon the request of the parent. In re Hayes, 261 N.C. 616, 135 S.E.2d 645 (1964).

And Emphasis Is on Welfare of Child and Effect on School. — The statute places all emphasis on the welfare of the child and the effect upon the school to which reassignment is re-

quested. In re Hayes, 261 N.C. 616, 135 S.E.2d 645 (1964); In re Varner, 266 N.C. 409, 146 S.E.2d 401 (1966).

It is the best interest of the applying child which must guide the deliberations and control the decision of the board, unless the granting of the application will interfere with the proper administration of the school to which the child seeks reassignment or will endanger the proper instruction, the health or the safety of the other children enrolled therein. In re Varner, 266 N.C. 409, 146 S.E.2d 401 (1966).

No Agreement Can Authorize Board to Deny Reassignment Required by Statute. — No agreement of the board with anyone, be he an employee of the federal government or otherwise, can authorize the board to deny an application for reassignment which the legislature, by a statute within its authority to enact, has provided that the board shall grant. In re Varner, 266 N.C. 409, 146 S.E.2d 401 (1966).

When Reassignment Must Be Made. — It is the duty of the board to reassign if the reassignment of the child to a new school will be for the best interest of the child and will not interfere with the proper administration of the school. In re Varner, 266 N.C. 409, 146 S.E.2d 401 (1966).

Right to Apply for Reassignment Is Limited to Parent, Guardian or Person in Loco Parentis. — The language of this section is clear with respect to the right to apply for a reassignment. That right is limited to the parent, guardian, or person standing in loco parentis to the child seeking reassignment. Notice of the board's decision must be given applicant or his parent. No notice is required to be given to the parents of other children; they are not parties to the hearing; they are not entitled to notice of the board's decision. In re Application for Reassignment, 247 N.C. 413, 101 S.E.2d 359 (1958).

The provisions of this section authorize the parent to apply to the appropriate public school official for the enrollment of his child or children by name in any public school within the county or city administrative unit in which such child or children reside. But such parent is not authorized to apply for admission of any child or children other than his own unless he is the guardian of such child or children or stands in loco parentis to such child or children. Joyner v. McDowell County Bd. of Educ., 244 N.C. 164, 92 S.E.2d 795 (1956).

Criteria for Considering Applications for Transfer. — The courts have uniformly approved residence and academic preparedness as appropriate criteria for considering applications for transfer. A variety of other criteria would undoubtedly be appropriate in given situations, so long as such criteria are not used in such a way as to deprive individuals of their constitutional rights. Wheeler v. Durham City Bd. of Educ., 196 F. Supp. 71 (M.D.N.C. 1961).

Failure of Parents and Child to Appear before Board for Interrogation. — A board of education, requested to transfer a child from one school to another, was clearly within its right before making its initial decision in requesting the child and his parents to appear for interrogation, and they on their part were clearly delinquent in refusing to attend and to furnish all relevant information in their possession. They were not justified in deferring their appearance until the "formal hearing" provided by this section for a review of an adverse decision, or on failing, even at that stage, to appear in person and submit to examination by members of the board. Thus they were not entitled to appeal for relief to the federal court, not having exhausted the remedies afforded them by the statutes of the State. Holt v. Raleigh City Bd. of Educ., 265 F.2d 95 (4th Cir. 1959).

Failure to Make Second Application Following Merger of Schools. — Where plaintiffs were assigned by the board to the school structure to which they sought admission, but a merger of two schools was followed in a few days by a series of actions whereby the newly integrated school was disintegrated without notice to the plaintiffs, their desire to attend an integrated school was completely frustrated and relief should not be denied on the ground that the plaintiffs have failed to make a second application to the board for reassignment after the merger of the two schools had taken place, nor should the plaintiffs be required again to pursue the administrative remedies without the aid of the court. McCoy v. Greensboro City Bd. of Educ., 283 F.2d 667 (4th. Cir. 1960).

Separate Suit for Each Child Is Not Required. — The dismissal of a suit by several parents of school children on the ground that they had not exhausted their administrative remedies does not mean that there must be a separate suit for each child on whose behalf it is claimed that an application for reassignment has been improperly denied. There can be no objection to the joining of a number of applicants in the same suit as has been done in other cases. The county board of education, however, is entitled, to consider each application on its individual merits, and if this is done without unnecessary delay and with scrupulous observance of individual constitutional rights, there will be no just cause for complaint. Covington v. Edwards, 264 F.2d 780 (4th Cir. 1959).

Exhaustion of State Remedies Required. — Persons aggrieved by the actions of the school officials of a state may not appeal for relief to the federal courts until they have exhausted the remedies afforded them by the statutes of the state. Holt v. Raleigh City Bd. of Educ., 265 F.2d 95 (4th Cir. 1959). See note to § 115-176.

System of Free Transfers Held Constitutionally Permissible. — Where a system of free transfers is the only means by which many

negroes can attend integrated schools, and each pupil in the system has the option, the existence of the right of transfer is constitutionally permissible. Swann v. Charlotte-Mecklenburg Bd. of Educ., 369 F.2d 29 (4th Cir. 1966).

Applied in Morrow v. Mecklenburg County Bd. of Educ., 195 F. Supp. 109 (W.D.N.C. 1961); Vickers v. Chapel Hill City Bd. of Educ., 196 F. Supp. 97 (M.D.N.C. 1961).

Quoted in Carson v. Warlick, 238 F.2d 724 (4th Cir. 1956).

Cited in Jeffers v. Whitley, 165 F. Supp. 951 (M.D.N.C. 1958); Wheeler v. Durham City Bd. of Educ., 210 F. Supp. 839 (M.D.N.C. 1962); Huggins v. Wake County Bd. of Educ., 272 N.C. 33, 157 S.E.2d 703 (1967); In re Reassignment of Albright, 278 N.C. 664, 180 S.E.2d 798 (1971).

§ 115-179. Appeal from decision of board. — Any person aggrieved by the final order of the county or city board of education may at any time within 10 days from the date of such order appeal therefrom to the superior court of the county in which such administrative school unit or some part thereof is located. Upon such appeal, the matter shall be heard de novo in the superior court before a jury in the same manner as civil actions are tried and disposed of therein. The record on appeal to the superior court shall consist of a true copy of the application and decision of the board, duly certified by the secretary of such board. If the decision of the court be that the order of the county or city board of education shall be set aside, then the court shall enter its order so providing and adjudging that such child is entitled to attend the school as claimed by the appellant, or such other school as the court may find such child is entitled to attend, and in such case such child shall be admitted to such school by the county or city board of education concerned. From the judgment of the superior court an appeal may be taken by an interested party or by the board to the appellate division in the same manner as other appeals are taken from judgments of such court in civil actions. (1955, c. 366, s. 4; 1969, c. 44, s. 73.)

"Person Aggrieved". — The "person aggrieved" as used in this section means the person who makes application for the particular child for reassignment. In re Application for Reassignment, 247 N.C. 413, 101 S.E.2d 359 (1958).

"De Novo". — The word "de novo" means fresh or anew; for a second time; and a de novo trial in appellate court is a trial had as if no action whatever had been instituted in the court below. In re Hayes, 261 N.C. 616, 135 S.E.2d 645 (1964).

The Pupil Assignment Law provides that, upon appeal from the board to the superior court, the matter shall be heard de novo. In re Varner, 266 N.C. 409, 146 S.E.2d 401 (1966).

In a matter being heard in the superior court de novo, it is as if it were before the court in the first instance. That is, the court has the same powers, the same duties, and the same standards to guide it as the board had in the first instance. In re Varner, 266 N.C. 409, 146 S.E.2d 401 (1966).

Who May Appeal. — An appeal to the superior court from the denial of an application made by any parent, guardian or person standing in loco parentis to any child or children for the admission of such child or children to a particular school, must be prosecuted in behalf of the child or children by the interested parent, guardian or person standing in loco parentis to such child or children respectively and not collectively. Joyner v. McDowell County Bd. of Educ., 244 N.C. 164, 92 S.E.2d 795 (1956); In re Application for Reassignment, 247 N.C. 413, 101 S.E.2d 359 (1958).

Where a municipal board of education grants the applications for reassignment of certain pupils, appeal from its decision may be taken as to each child only by the child's parent, guardian or person standing in loco parentis, and the parents of other children attending the schools to which the reassignments are made are not the parties aggrieved by such reassignments within the purview of this section, and have no standing in court to contest the assignments. Moreover, each reassignment must be challenged separately; reassignments cannot be challenged en masse. In re Application for Reassignment, 247 N.C. 413, 101 S.E.2d 359 (1958).

No agreement of the board can deprive the courts of this State of jurisdiction conferred upon them by this section, or bar the court, before which an appeal from the board's order is brought as provided by this section, from entering the judgment prescribed in such case by this section. In re Varner, 266 N.C. 409, 146 S.E.2d 401 (1966).

And Courts Will Determine Right to Reassignment According to Statutory Standards. — So long as the Pupil Assignment Law remains the law of North Carolina, the courts of this State in passing upon appeals from orders of the

boards of education concerning applications for the reassignment of children to the public schools, will determine the right to reassignment in accordance with the standards prescribed by the statute, not pursuant to agreements between the board and another or letters from such other party setting forth his ex parte construction of the alleged agreement. In re Varner, 266 N.C. 409, 146 S.E.2d 401 (1966).

Power of Superior Court. — The appeal in a de novo hearing vests the superior court with full power to make the requested reassignment if permitted by law. In re Hayes, 261 N.C. 616, 135 S.E.2d 645 (1964).

On appeal, the superior court has the authority to reassign the child to the school which he and his parents want him to attend, if that is in the best interest of the child and the child's enrollment therein will not interfere with the proper administration of that school or endanger the instruction, the health or the safety of the other pupils there enrolled. In re Varner, 266 N.C. 409, 146 S.E.2d 401 (1966).

Upon appeal, the superior court has the authority to reassign the child to a school of another administrative unit, even though the board of education of the administrative unit wherein the child resides objects. In re Varner, 266 N.C. 409, 146 S.E.2d 401 (1966).

Waiver of Jury Trial. — While this section provides for a de novo hearing before a jury, nevertheless the parties, by consenting to reference to a referee, waive the jury trial and substitute therefor the hearing before the referee. In re Hayes, 261 N.C. 616, 135 S.E.2d 645 (1964).

Mandamus. — An application for mandamus, requiring the immediate integration of all negro pupils residing in the administrative unit, is neither contemplated nor authorized by this section. Joyner v. McDowell County Bd. of Educ., 244 N.C. 164, 92 S.E.2d 795 (1956).

Federal Remedies. — The appeals to the courts which this Article provides are judicial, not administrative, remedies, and after administrative remedies before the school boards have been exhausted, judicial remedies for denial of constitutional rights may be pursued at once in the federal courts without pursuing State court remedies. Carson v. Warlick, 238 F.2d 724 (4th Cir. 1956); Holt v. Raleigh City Bd. of Educ., 164 F. Supp. 853 (E.D.N.C. 1958); Covington v. Edwards, 264 F.2d 780 (4th Cir. 1959).

Applied in Fries v. Rowan County Bd. of Educ., 7 N.C. App. 341, 172 S.E.2d 75 (1970).

Cited in Jeffers v. Whitley, 165 F. Supp. 951 (M.D.N.C. 1958); In re Reassignment of Albright, 278 N.C. 664, 180 S.E.2d 798 (1971).

§ 115-179.1. Exceptional children; special program; dissatisfaction with assignment; right to appeal. — (a) A child, his parent or guardian, may obtain review, as herein provided, of an action or omission by State or local authorities on the ground that the child has been or is about to be:

(1) Denied entry or continuance in a program appropriate to his condition and needs;

(2) Placed in a program which is inappropriate, unsuitable, or inadequate to his condition and needs; or

(3) Assigned to a special program when he is not a child with special need.

(b) The parent or guardian of a child placed or denied placement in a program shall be notified promptly, by registered or certified mail, return receipt requested, of his placement, denial or impending placement or denial. Such notice shall contain a statement informing the parent or guardian that he is entitled to review of the determination and of the procedure for obtaining such review. The notice shall contain information that a hearing may be had before the local school board for educational matters or the Advocacy Council for Human Resource matters, upon written request, no less than 15 days nor more than 30 days from the date on which the notice was received. The parent or guardian of a child may, upon written request, not more than 30 days from the date of a decision, appeal said decision to the State Superintendent of Public Instruction or the Secretary of Human Resources. Any appeal of these decisions to the General Court of Justice must occur within 30 days after notice of such decision.

(c) All hearings shall be closed unless otherwise requested by the parent or guardian of a child.

(d) Ordinarily no change in the program assignment or status of a child with special needs shall be made within the period afforded the parent or guardian to request a hearing, except that such change may be made with the written consent of the parent or guardian. However, if the health or safety of the child

or any other individual would be endangered by delaying the change in assignment, the change may be sooner made, but without prejudice to any rights that the child and his parent or guardian may have pursuant to this section or otherwise pursuant to law.

(e) The parent or guardian shall have access to any reports, records, clinical evaluations or other materials upon which the determination to be reviewed was wholly or partially based or which could reasonably have a bearing on the correctness of the determination. At any hearing held pursuant to this section, the child and his parent or guardian shall be entitled to examine and cross-examine witnesses, to introduce evidence, to appear in person, and to be represented by counsel.

(f) The Superintendent and the Secretary shall make, amend or revise rules and regulations for the conduct of hearings authorized by this section and otherwise for the implementation of its purpose. Among other things, such rules and regulations shall allow the appointment of a hearing officer or board to hear such cases as may be appealed. Copies of such rules shall be filed in the office of the Secretary of State as by law provided.

(g) The determination of the appeal shall be subject to judicial review in the manner provided for in Article 31, Chapter 134 of the General Statutes.

(h) The remedies provided by this section are in addition to any other remedies which a child, his parent or guardian may otherwise have pursuant to law. (1973, c. 1293, s. 10.)

Editor's Note. — Article 31, Chapter 134, referred to in subsection (g), does not exist. A reference to former Article 33, Chapter 143 may have been intended. For present provisions as to the Administrative Procedure Act, see now Chapter 150A.

SUBCHAPTER IX. SCHOOL TRANSPORTATION.

ARTICLE 22.

School Buses.

§ 115-180. Authority of county and city boards of education. — Each county board of education, and each city board of education is hereby authorized, but is not required, to acquire, own and operate school buses for the transportation of pupils enrolled in the public schools of such county or city administrative unit and of persons employed in the operation of such schools within the limitations set forth in this Subchapter. Boards of education which own and operate school buses for the transportation of pupils shall have authority to establish separate systems of transportation for pupils attending elementary schools and for pupils attending junior or senior high schools. Each such board may operate such buses to and from such of the schools within the county or city administrative unit, and in such number, as the board shall from time to time find practicable and appropriate for the safe, orderly and efficient transportation of such pupils and employees to such schools. (1955, c. 1372, art. 21, s. 1; 1973, c. 586, s. 1.)

Editor's Note. — The 1973 amendment added the second sentence.

Session Laws 1973, c. 586, s. 2, provides: "Funds appropriated for this purpose shall be allocated to the respective county and city boards of education to implement the purposes of this act in accordance with the requirements of such boards as determined by the State Board of Education."

State Board Relieved of Responsibility. — The General Assembly relieved the State Board of Education from all responsibility in connection with the operation and control of school buses in this State by the enactment of this Article, which authorizes county and city boards of education to operate buses for the transportation of pupils enrolled in the public schools of such county or city administrative units. Huff v. Northampton County Bd. of Educ., 259 N.C.

75, 130 S.E.2d 26 (1963); Brown v. Charlotte-Mecklenburg Bd. of Educ., 267 N.C. 740, 149 S.E.2d 10 (1966).

This section authorizes a city board of education, without limitation, to transport all pupils residing within the unit. Styers v. Phillips, 277 N.C. 460, 178 S.E.2d 583 (1971).

Whether any school board shall operate a bus transportation system is a matter in its sole discretion. Styers v. Phillips, 277 N.C. 460, 178 S.E.2d 583 (1971).

A city board is not required to transport pupils living in the city and attending schools located therein even though transportation to those same schools is furnished pupils living outside the city. Styers v. Phillips, 277 N.C. 460, 178 S.E.2d 583 (1971).

Relief from Providing Transportation Not Construed as Prohibition against Providing It. — Subsection (e) of § 115-186 merely relieves the city boards of any duty to provide transportation and cannot be construed as a prohibition against providing it — especially in the face of this section which grants to city boards, without limitation, the authority to operate transportation systems. Styers v. Phillips, 277 N.C. 460, 178 S.E.2d 583 (1971).

The school boards have the power to use school buses for all legitimate school purposes. Swann v. Charlotte-Mecklenburg Bd. of Educ., 300 F. Supp. 1358 (W.D.N.C. 1969).

Use of School Buses to Promote Desegregation of Schools. — School buses can be used by the school boards to provide the flexibility and economy necessary to desegregate the schools. Swann v. Charlotte-Mecklenburg Bd. of Educ., 300 F. Supp. 1358 (W.D.N.C. 1969).

The school board is free and encouraged to use school buses or other public transportation and to use mobile classrooms as needed to provide equality of educational opportunity. Swann v. Charlotte-Mecklenburg Bd. of Educ., 300 F. Supp. 1358 (W.D.N.C. 1969).

Transportation of Students under Desegregation Plan Retaining Freedom of Choice. — If freedom of choice is retained in a desegregation plan, it should include provision for transportation free for any student who requests transfer out of a school where his race is in the majority, and to any school where his race is in the minority, and a means of insuring that all students have full and timely knowledge of the availability of such transportation. Swann v. Charlotte-Mecklenburg Bd. of Educ., 300 F. Supp. 1358 (W.D.N.C. 1969).

Transportation of School Bands and Athletic Teams. — While it is true that this Article which governs the operation of school buses, makes no provision one way or the other for the transportation of athletic teams or school bands, it is equally true that school bands and athletic teams are under the control of the school authorities. Therefore the board controlling such activities would have the inherent right to contract for such transportation as might be necessary to transport its athletic teams and its bands to and from such events as have been scheduled under the supervision of school authorities. State ex rel. North Carolina Util. Comm'n v. McKinnon, 254 N.C. 1, 118 S.E.2d 134 (1961).

§ 115-181. Authority and duties of State Board of Education. — (a) The State Board of Education shall have no authority over or control of the transportation of pupils and employees upon any school bus owned and operated by any county or city board of education, except as provided in this Subchapter.

(b) The State Board of Education shall be under no duty to supply transportation to any pupil or employee enrolled or employed in any school. Neither the State nor the State Board of Education shall in any manner be liable for the failure or refusal of any county or city board of education to furnish transportation, by school bus or otherwise, to any pupil or employee of any school, or for any neglect or action of any county or city board of education, or any employee of any such board, in the operation or maintenance of any school bus.

(c) The State Board of Education shall, as soon as may be practicable, allocate and assign all school buses and service vehicles now owned by the State to respective county and city boards of education in accordance with the present need of each such board for school bus transportation. Such need shall be determined by the State Board of Education from its records showing the number of state-owned buses and service vehicles presently being operated by such county or city administrative unit. Upon such assignment and allocation of such school buses and service vehicles the State Board of Education shall cause the title to each such bus or service vehicle to be transferred to the county

board of education, or to the city board of education to which such bus or service vehicle has been so assigned and allocated.

(d) The State Board of Education shall from time to time adopt such rules and regulations with reference to the construction, equipment, color, and maintenance of school buses, the number of pupils who may be permitted to ride at the same time upon any bus, and the age and qualifications of drivers of school buses as it shall deem to be desirable for the purpose of promoting safety in the operation of school buses. No school bus shall be operated for the transportation of pupils unless such bus is constructed and maintained as prescribed in such regulations and is equipped with adequate heating facilities, a standard signaling device for giving due notice that the bus is about to make a turn, an alternating flashing stoplight on the front of the bus, an alternating flashing stoplight on the rear of the bus, and such other warning devices, fire protective equipment and first aid supplies as may be prescribed for installation upon such buses by the regulation of the State Board of Education.

(e) The State Board of Education shall, when requested so to do by any county or city board of education, but not otherwise, advise such county or city board with reference to the establishment and amendment of school bus routes, the acquisition and maintenance of school buses, or any other question which may arise in connection with the organization and operation of the school bus transportation system of such county or city board.

(f) The State Board of Education shall allocate to the respective county and city boards of education all funds appropriated from time to time by the General Assembly for the purpose of providing transportation to the pupils enrolled in the public schools within this State. All such funds shall be allocated by the State Board of Education in accordance with the number of pupils to be transported, the length of bus routes, road conditions and all other circumstances affecting the cost of the transportation of pupils by school bus to the end that the funds so appropriated may be allocated on a fair and equitable basis, according to the needs of the respective county and city administrative units and so as to provide the most efficient use of such funds. Such allocation shall be made by the State Board of Education at the beginning of each fiscal year, except that the State Board may reserve for future allocation from time to time within such fiscal year as the need therefor shall be found to exist, a reasonable amount not to exceed ten percent (10%) of the total funds available for transportation in such fiscal year from such appropriation.

(g) Upon such allocation by the State Board of Education, all funds so appropriated by the General Assembly shall be paid over to the respective county and city boards of education in accordance with such allocation in equal monthly installments throughout the regular school year: Provided, however, that upon the request of a county or city board of education, the State Board of Education may, in its discretion, pay over to the county or city board all or any part of any or all monthly installments prior to the time when the same would otherwise be payable. The respective county and city boards shall use such funds for the purposes of replacing, maintaining, insuring, and operating public school buses and service vehicles in accordance with the provisions of this Subchapter, and for no other purpose, but in the making of expenditures for such purposes shall be subject to no control by the State Board of Education. (1955, c. 1372, art. 21, p. 2.)

State Board to Allocate Funds. — The State Board is authorized and directed by subsection (f) to allocate, without restriction, the funds appropriated for transportation during the school year to the boards of education which have elected to provide school bus transportation. Styers v. Phillips, 277 N.C. 460, 178 S.E.2d 583 (1971).

Burden of Producing Evidence that Board Failed to Make Allocations. — The burden is upon plaintiffs to produce evidence that the State Board has failed to make the allocations

required by subsection (f). Styers v. Phillips, 277 N.C. 460, 178 S.E.2d 583 (1971).

Authority and Control by State Board Limited. — The only authority and control which the State Board has over the transportation of pupils is that provided in this Article. Styers v. Phillips, 277 N.C. 460, 178 S.E.2d 583 (1971).

State Board Not Responsible for Operation of School Buses. — The General Assembly has relieved the State Board of all responsibility for the operation of school buses. Styers v. Phillips, 277 N.C. 460, 178 S.E.2d 583 (1971).

The State Board does not authorize the transportation of any pupils. It allocates available funds to those boards which elect to operate transportation systems. Styers v. Phillips, 277 N.C. 460, 178 S.E.2d 583 (1971).

"The Respective County and City Boards of Education" Defined. — In subsection (f), "the respective county and city boards of education" means those which have elected to operate school buses. Styers v. Phillips, 277 N.C. 460, 178 S.E.2d 583 (1971).

Accelerated allocation and expenditure of transportation appropriation is sanctioned under subsection (g) of this section. Styers v. Phillips, 277 N.C. 460, 178 S.E.2d 583 (1971).

Quoted in Turner v. Gastonia City Bd. of Educ., 250 N.C. 456, 109 S.E.2d 211 (1959).

Stated in Sparrow v. Gill, 304 F. Supp. 86 (M.D.N.C. 1969).

§ 115-181.1: Repealed by Session Laws 1965, c. 1095, s. 1.

§ 115-182. Assignment of school buses to schools. — The superintendent of the schools of each county or city administrative unit which shall elect to operate a school bus transportation system, shall, prior to the commencement of each regular school year and subject to the approval of the county or city board of education, allocate and assign to the respective public schools within the jurisdiction of such county or city administrative unit the school buses which the county or city board shall own and direct to be operated during such school year. From time to time during such school year, subject to the directions of the county or city board of education, the superintendent may revise such allocation and assignment of school buses in accordance with the changing transportation needs and conditions at the respective schools of such county or city administrative unit, and may, pursuant to such revision, assign an additional bus or buses to a school or withdraw a bus or buses from a school in such county or city administrative unit. (1955, c. 1372, art. 21, s. 3.)

§ 115-183. Use and operation of school buses. — Public school buses may be used for the following purposes only, and it shall be the duty of the superintendent of the school of each county and city administrative unit to supervise the use of all school buses operated by such county or city administrative unit so as to assure and require compliance with this section:

(1) A school bus may be used for the transportation of pupils enrolled in and employees in the operation of the school to which such bus is assigned by the superintendent of the schools of the county or administrative unit. Except as otherwise herein provided, such transportation shall be limited to transportation to and from such school for the regularly organized school day, and from and to the points designated by the principal of the school to which such bus is assigned, for the receiving and discharging of passengers. No pupil or employee shall be so transported upon any bus other than the bus to which such pupil or employee has been assigned pursuant to the provisions of this Subchapter. Provided, that children enrolled in a Headstart program which is housed in a building owned and operated by a county or city school administrative unit where school is being conducted may be transported on public school buses provided, however, the contractual arrangements made shall cause no extra expense to the State.

(2) In the case of illness or injury requiring immediate medical attention of any pupil or employee while such pupil or employee is present at the school in which such pupil is enrolled or such employee is employed,

the principal of such school may, in his discretion, permit such pupil or employee to be transported by a school bus to a doctor or hospital for medical treatment, and may, in his discretion, permit such other person as he may select to accompany such pupil.

(3) The board of education of any county or city administrative unit may operate the school buses of such unit one day prior to the opening of the regular school term for the transportation of pupils and employees to and from the school to which such pupils are assigned or in which they are enrolled and such employees are employed, for the purposes of the registration of students, the organization of classes, the distribution of textbooks, and such other purposes as will, in the opinion of the superintendent of the schools of such unit, promote the efficient organization and operation of such public schools.

(4) A county school board or the school board of a city administrative unit, which elects to operate a school bus transportation system, shall not be required to provide transportation for any employee other than the driver of the bus, nor shall such board be required to provide transportation for any pupil living within one and one-half miles of the school in which such pupil is enrolled.

(5) County or city boards of education, under such rules and regulations as they shall adopt, may permit the use and operation of school buses for the transportation of pupils and instructional personnel as the board deems necessary to serve the instructional programs of the schools. Included in the use permitted by this section is the transportation of children with special needs, such as mentally retarded children and children with physical defects, and children enrolled in programs that require transportation from the school grounds during the school day, such as special vocational or occupational programs. On any such trip,

If State funds are inadequate to pay for the transportation approved by the local board of education, local funds may be used for these purposes. County or city boards of education shall determine that funds are available to such boards for the transportation of children to and from the school to which they are assigned for the entire school year before authorizing the use and operation of school buses for other services deemed necessary to serve the instructional program of the schools.

(6) Under rules and regulations to be adopted by the board of education, school buses owned by said board may also be used for the evacuation of pupils and other school employees when such an evacuation is jointly authorized and directed by State and county or city civil defense directors; provided, the State Board of Education shall not be liable for operating costs nor for any compensation claims or tort claims incurred as a result of such an evacuation; provided further when buses are used for such civil defense purposes, the local civil defense agency in the area in which such evacuation tests are conducted shall be liable for operating costs and shall provide liability insurance for the full protection of the pupils and all school employees taking part in such evacuation tests and for all other compensation claims or tort claims incurred as a result of such evacuation. (1955, c. 1372, art. 21, s. 4; 1957, c. 1103; 1969, c. 47; 1973, c. 869.)

Local Modification. — Buncombe: 1967, c. 480; Mecklenburg: 1961, c. 143.

Cross Reference. — As to maximun speed school buses allowed to travel, see § 20-218.

Editor's Note. — The 1973 amendment added the proviso at the end of subdivision (1).

Stated in Sparrow v. Gill, 304 F. Supp. 86 (M.D.N.C. 1969).

Cited in Styers v. Phillips, 277 N.C. 460, 178 S.E.2d 583 (1971).

§ 115-184. Assignment of pupils to school buses. — (a) The principal of a school, to which any school bus has been assigned by the superintendent of the schools of the county or city administrative unit embracing such school, shall assign to such bus or buses the pupils and employees who may be transported to and from such school upon such bus or buses. No pupil or employee shall be permitted to ride upon any school bus to which such pupil or employee has not been so assigned by the principal, except by the express direction of the principal.

(b) In the event that the superintendent of the schools of any county or city administrative unit shall assign a school bus to be used in the transportation of pupils to two or more schools, the superintendent shall designate the number of pupils to be transported to and from each such school by such bus, and the principals of the respective schools shall assign pupils to such buses in accordance with such designation.

(c) Any pupil enrolled in any school, or the parent or guardian of any such pupil, or the person standing in loco parentis to such pupil, may apply to the principal of such school for transportation to and from such school by school bus for the regularly organized school day. The principal thereupon shall assign such pupil to a school bus serving the bus route upon which such pupil lives, if any, and if such pupil is entitled to ride upon such bus in accordance with the provisions of this Subchapter and the regulations of the State Board of Education herein provided for. Such assignment shall be made by the principal so as to provide for the orderly, safe and efficient transportation of pupils to such school and so as to promote the orderly and efficient administration of the school and the health, safety and general welfare of the pupils to be so transported. Assignments of pupils and employees to school buses may be changed by the principal of the school as he may from time to time find proper for the safe and efficient transportation of such pupils and employees.

(d) The parent or guardian of any pupil enrolled in any school, or the person standing in loco parentis to any such pupil, who shall apply to the principal of such school for the transportation of such pupil to and from such school by school bus, may, if such application is denied, or if such pupil is assigned to a school bus not satisfactory to such parent, guardian, or person standing in loco parentis to such pupil, pursuant to rules and regulations established by the county or city board of education, apply to such board for such transportation upon a school bus designated in such application, and shall be entitled to a prompt and fair hearing by such board in accordance with the rules and regulations established by it. The majority of such board shall be a quorum for the purpose of holding such hearing and passing upon such application, and the decision of the majority of the members present at such hearing shall be the decision of the board. If, at such hearing, the board shall find that pupil is entitled to be transported to and from such school upon the school bus designated in such application, or if the board shall find that the transportation of such pupil upon such bus to and from such school will be for the best interests of such pupil, will not interfere with the proper administration of such school, or with the safe and efficient transportation by school bus of other pupils enrolled in such school and will not endanger the health or safety of the children there enrolled, the board shall direct that such child be assigned to and transported to such school upon such bus.

(e) Any person aggrieved by the final order of the county or city board of education may at any time within 10 days from the date of such order appeal therefrom to the superior court of the county in which such administrative school unit or some part thereof is located. Upon such appeal, the matter shall be heard de novo in the superior court before a jury in the same manner as civil actions are tried and disposed of therein. The record on appeal to the superior court shall consist of a true copy of the application and decision of the board, duly certified

by the secretary of such board. If the decision of the court be that the order of the county or city board of education shall be set aside, then the court shall enter its order so providing and adjudging that such child is entitled to be transported to and from such school upon the school bus designated in such application, and in such case such child shall be assigned to such school bus by the county or city board of education concerned. From the judgment of the superior court an appeal may be taken by any interested party or by the board to the Supreme Court in the same manner as other appeals are taken from judgments of such court in civil actions.

(f) No employee shall be assigned to or permitted to ride upon a school bus when to do so will result in the overcrowding of such bus or will prevent the assignment to such bus of a pupil entitled to ride thereon, or will otherwise, in the opinion of the principal, be detrimental to the comfort or safety of the pupils assigned to such bus, or to the safe, efficient and proper operation of such bus. (1955, c. 1372, art. 21, s. 5.)

Discharge of School Children from School Bus at Day-Care Center. — See opinion of Attorney General to Mr. D.P. Whitley, Jr., 41 N.C.A.G. 788 (1972).

§ 115-185. School bus drivers; monitors. — (a) Each county or city school board, which elects to operate a school bus transportation system, shall employ the necessary drivers for such school buses. Such drivers shall possess all qualifications prescribed by the regulations of the State Board of Education herein provided for, but the selection and employment of each driver shall be made by the county or city board of education, and the driver shall be the employee of such county or city administrative unit. Each county or city board of education shall assign the bus drivers employed by it to the respective schools within the jurisdiction of such board, and the principal of each such school shall assign the drivers to the school buses to be driven by them. No school bus shall at any time be driven or operated by any person other than the bus driver assigned by such principal to such bus except by the express direction of such principal or in accordance with rules and regulations of the appropriate local board of education.

(b) The driver of a school bus subject to the direction of the principal shall have complete authority over and responsibility for the operation of the bus and the maintaining of good order and conduct upon such bus, and shall report promptly to the principal any misconduct upon such bus or disregard or violation of the driver's instructions by any person riding upon such bus. The principal may take such action with reference to any such misconduct upon a school bus, or any violation of the instructions of the driver, as he might take if such misconduct or violation had occurred upon the grounds of the school.

(c) The driver of any school bus shall permit no person to ride upon such bus except pupils or school employees assigned thereto or persons permitted by the express direction of the principal to ride thereon.

(d) The principal of a school, to which a school bus has been assigned, may, in his discretion, appoint a monitor for any bus so assigned to such school. It shall be the duty of such monitor, subject to the direction of the driver of the bus, to preserve order upon the bus and do such other things as may be appropriate for the safety of the pupils and employees assigned to such bus while boarding such bus, alighting therefrom or being transported thereon, and to require such pupils and employees to conform to the rules and regulations established by the county or city board of education for the safety of pupils and employees upon school buses. (1955, c. 1372, art. 21, s. 6.)

Cross Reference. — As to standard qualifications of school bus drivers, see § 20-218.

Applied in Huff v. Northampton County Bd. of Educ., 259 N.C. 75, 130 S.E.2d 26 (1963).

Cited in Branch Banking & Trust Co. v. Wilson County Bd. of Educ., 251 N.C. 603, 111 S.E.2d 844 (1960).

§ 115-186. School bus routes. — (a) The principal of the school to which a school bus has been assigned shall, prior to the commencement of each regular school year, prepare and submit to the superintendent of the schools of the county or city administrative unit a plan for a definite route, including stops for receiving and discharging pupils, for each school bus assigned to such school so as to assure the most efficient use of such bus and the safety and convenience of the pupils assigned thereto. The superintendent shall examine such plan and may, in his discretion, obtain the advice of the State Board of Education with reference thereto. The superintendent shall make such changes in the proposed bus routes as he shall deem proper for the said purposes and, thereupon, shall approve the route. When so approved the buses shall be operated upon the route so established and not otherwise, except as provided in this Subchapter. From time to time the principal may suggest changes in any such bus route as he shall deem proper for the said purposes, and the same shall be effective when approved by the superintendent of the county or city administrative unit.

(b) Unless road or other conditions shall make it inadvisable to do so, public school buses shall be so routed on state-maintained highways that the school bus, to which such pupil is assigned, shall pass within one mile of the residence of each pupil, who lives one and one-half miles or more from the school to which such pupil is assigned.

(c) All bus routes when established pursuant to this section shall be filed in the office of the board of education of the county or city administrative unit, and all changes made therein shall be filed in the office of such board within 10 days after such change shall become effective.

(d) If any school bus route established or changed as hereinabove provided is unsatisfactory to the district school committee, the committee may request the board of education of the county or city administrative unit to make such change in such route as the committee desires. In the event, the board of education shall hear the request of the district school committee and shall make such change, if any, in such route as to the board shall seem advisable so as to assure the most efficient use of such bus and the safety and convenience of the pupils assigned thereto.

(e) No provision of this Subchapter shall be construed to place upon the State, or upon any county or city, any duty to supply any funds for the transportation of pupils, or any duty to supply funds for the transportation of pupils who live within the corporate limits of the city or town in which is located the public school in which such pupil is enrolled or to which such pupil is assigned, even though transportation to or from such school is furnished to pupils who live outside the limits of such city or town. (1955, c. 1372, art. 21, s. 7; 1959, c. 573, s. 15; 1963, c. 990, ss. 2, 3; 1965, c. 1095, ss. 2, 3.)

Subsection (e) of this section is plainly constitutional. Sparrow v. Gill, 304 F. Supp. 86 (M.D.N.C. 1969).

The distinction between county and city pupils, created by subsection (e) of this section, is a constitutionally valid one. Sparrow v. Gill, 304 F. Supp. 86 (M.D.N.C. 1969).

Subsection (e) of this section is wholly reasonable. The State legislature could reasonably have concluded that transportation was more imperative for county students than for city students. The degree of urbanization of the entire State has not yet become so pronounced that the legislature might not reasonably conclude that city students have easier access than do county students to public transportation; that they are more apt to have sidewalks and other pedestrian protections on their way to school; that they are more apt to participate in an "automobile" culture simplifying family transportation and the formation of carpools, than their county-dwelling counterparts. Sparrow v. Gill, 304 F. Supp. 86 (M.D.N.C. 1969).

Whether it would be better and fairer to abolish the city-county distinction and go to a measured-distance-from-school basis is a political question for the people and their legislative representatives. Sparrow v. Gill, 304 F. Supp. 86 (M.D.N.C. 1969).

Whether any school board shall operate a bus transportation system is a matter in its sole discretion. Styers v. Phillips, 277 N.C. 460, 178 S.E.2d 583 (1971).

There is no "duty" to provide transportation to city pupils attending in-city schools. Sparrow v. Gill, 304 F. Supp. 86 (M.D.N.C. 1969).

A city board is not required to transport pupils living in the city and attending schools located therein even though transportation to those same schools is furnished pupils living outside the city. Styers v. Phillips, 277 N.C. 460, 178 S.E.2d 583 (1971).

This section merely declares that the transportation of pupils who live outside the city limits in which the school they attend is located does not impose a correlative duty to transport pupils who live within the city and attend the same school. This classification is entirely reasonable, since ordinarily school children can obtain both private and public transportation more easily in the cities than in rural areas. Styers v. Phillips, 277 N.C. 460, 178 S.E.2d 583 (1971).

But Boards Not Forbidden to Supply Funds for Intra-City Transportation. — Subsection (e) of this section does not forbid either the State Board or local boards to supply funds for the intra-city transportation of pupils. Styers v. Phillips, 277 N.C. 460, 178 S.E.2d 583 (1971).

Subsection (e) of this section, which merely relieves the city boards of any duty to provide transportation, cannot be construed as a prohibition against providing it — especially in the face of § 115-180, which grants to city boards, without limitation, the authority to operate transportation systems. Styers v. Phillips, 277 N.C. 460, 178 S.E.2d 583 (1971).

Subsection (e) of this section does not prevent the State Board from allocating funds for the intra-city transportation of students. Styers v. Phillips, 277 N.C. 460, 178 S.E.2d 583 (1971).

Transportation Required for Certain Students. — This section requires provision of transportation for all students who are assigned to schools more than one and one-half miles from their homes. Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 1, 91 S. Ct. 1267, 28 L. Ed. 2d 554 (1971).

Local school authorities may be required to employ bus transportation as one tool of school desegregation. Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 1, 91 S. Ct. 1267, 28 L. Ed. 2d 554 (1971).

Cited in Morrow v. Mecklenburg County Bd. of Educ., 195 F. Supp. 109 (W.D.N.C. 1961).

§ 115-187. Inspection of school buses and activity buses; report of defects by drivers; discontinuing use until defects remedied. — (a) The superintendent of schools in each county, and in each city administrative unit, shall cause each school bus owned or operated by such county or city administrative unit to be inspected at least once each 30 days during the school year for mechanical defects, or other defects which may affect the safe operation of such bus. A report of such inspection, together with the recommendations of the person making the inspection, shall be filed promptly in the office of the superintendent of the schools of such county or city administrative unit, and a copy thereof shall be forwarded to the principal of the school to which such bus is assigned.

(b) It shall be the duty of the driver of each school bus to report promptly to the principal of the school, to which such bus is assigned, any mechanical defect or other defect which may affect the safe operation of the bus when such defect comes to the attention of the driver, and the principal shall thereupon report such defect to the superintendent of the schools of the county or city administrative unit. It shall be the duty of the superintendent of the schools of the county or city administrative unit to cause any and all such defects to be corrected promptly.

(c) If any school bus is found by the principal of the school, to which it is assigned, or by the superintendent of the schools of the county or city administrative unit, to be so defective, that the bus may not be operated with reasonable safety, it shall be the duty of such principal or superintendent to cause the use of such bus to be discontinued until such defect is remedied, in which event the principal of the school, to which such bus is assigned, may permit the use of a different bus assigned to such school in the transportation of the pupils and employees assigned to the bus found to be defective.

(d) The superintendent of schools in each county, and in each city administrative unit, shall cause each activity bus which is used for the transportation of students by such county or city administrative unit or any public school system therein to be inspected for mechanical defects, or other defects which may affect the safe operation of such activity bus, at the same time and in the same way and manner as the regular public school buses for the normal transportation of public school pupils are inspected. A report of such inspection, together with the recommendations of the person making the inspection, shall be filed with the principal of the school which uses and operates such activity bus and a copy shall be forwarded to the superintendent of schools or city administrative unit involved. It shall be the duty of the driver of each activity bus to make the same reports to the principal of the school using and operating such activity bus as is required by this section. If any public school activity bus is found to be so defective that the activity bus may not be operated with reasonable safety, it shall be the duty of such principal to cause the use of such activity bus to be discontinued until such defect is remedied to the satisfaction of the person making the inspection and a report to this effect has been filed in the manner herein prescribed. Nothing in this subsection shall authorize the use of State or local tax funds for the purchase, operation or repair of any activity bus. (1955, c. 1372, art. 21, s. 8; 1961, c. 474.)

§ 115-188. Purchase and maintenance of school buses, materials and supplies. — (a) To the extent that the funds shall be made available to it for such purpose, a county board of education or a city board of education is authorized to purchase from time to time such additional school buses and service vehicles or replacements for school buses and service vehicles, as may be deemed by such board to be necessary for the safe and efficient transportation of pupils enrolled in the schools within such county or city administrative unit. Any school bus so purchased shall be constructed and equipped as prescribed by the provisions of this Subchapter and by the regulations of the State Board of Education issued pursuant thereto.

(b) The tax levying authorities of any county are hereby authorized to make provision from time to time in the capital outlay budget of the county for the purchase of such school buses or service vehicles.

(c) Any funds appropriated from time to time by the General Assembly for the purchase of school buses or service vehicles shall be allocated by the State Board of Education to the respective county and city boards of education in accordance with the requirements of such boards as determined by the State Board of Education, and thereupon shall be paid over to the respective county and city boards of education in accordance with such allocation.

(d) The title to any additional or replacement school bus or service vehicle purchased pursuant to the provisions of this section, shall be taken in the name of the board of education of such county or city administrative unit, and such bus shall in all respects be maintained and operated pursuant to the provisions of this Subchapter in the same manner as any other public school bus.

(e) It shall be the duty of the county board of education to provide adequate buildings and equipment for the storage and maintenance of all school buses and service vehicles owned or operated by the county board of education or by the board of education of any city administrative unit in such county. It shall be the duty of the tax levying authorities of such county to provide in its capital outlay budget for the construction or acquisition of such buildings and equipment as may be required for this purpose.

(f) In the event of the damage or destruction of any school bus or service vehicle by fire, collision, or otherwise, the board of education of the county or city administrative unit which shall own or operate such bus or service vehicle may apply to the State Board of Education for funds with which to replace it. If the State Board of Education finds that such bus or service vehicle has been

destroyed or damaged to the extent that it cannot be made suitable for further use, and if the State Board of Education finds that the replacement of such bus or service vehicle is necessary in order to enable such county or city administrative unit to operate properly its school bus transportation system, the State Board of Education shall allot to the board of education of such county or city administrative unit from the funds now held by the State Board of Education for the replacement of school buses or service vehicles, or from funds hereafter appropriated by the General Assembly for that purpose, a sum sufficient to purchase a new school bus or service vehicle to be used as a replacement for such damaged or destroyed bus or service vehicle and upon such allocation such sum shall be paid over to or for the account of the board of education of such county or city administrative unit for such purpose.

(g) All school buses or service vehicles purchased by or for the account of any county or city board of education, except school buses or service vehicles purchased by such board from another county or city board of education of this State, shall be purchased through the Division of Purchase and Contract.

(h) Appropriations made in the biennial Budget Appropriation Act for the purchase of public school buses shall be permanent appropriations, and unexpended portions of those appropriations shall not revert to the general fund at the end of the biennium for which appropriated. Any unexpended portion of those appropriations shall at the end of each fiscal year be transferred to a reserve account and shall be held, together with any other funds appropriated for the purpose, for the purchase of public school buses. (1955, c. 1372, art. 21, s. 9; 1961, c. 833, s. 16.)

Cited in Styers v. Phillips, 277 N.C. 460, 178 S.E.2d 583 (1971).

§ 115-189. Aid in lieu of transportation. — (a) When, by reason of road conditions or otherwise, any county or city board of education, which shall elect to operate a school bus transportation system, shall find it impracticable to furnish to a pupil transportation by school bus to the school in which such pupil is enrolled, or to which such pupil is assigned, the board may assign such pupil to such other school within such county or city administrative unit as the board shall deem advisable, unless the parent or guardian of such pupil or the person standing in loco parentis to such pupil, shall notify the principal of the school, in which such pupil is enrolled or to which such pupil is assigned, of the desire of such pupil to continue to attend such school without the benefit of transportation by school bus.

(b) In the event that any county or city board of education, which shall operate a system of school bus transportation, shall find it impracticable to furnish to a pupil such transportation to the school in which such pupil is enrolled or to which such pupil is assigned, and if, as a result thereof, such pupil shall be required to obtain board and lodging at a place other than the residence of such pupil in order to attend a school, such board may, in its discretion, provide for the payment to the parent or guardian of such pupil of a sum not to exceed fifty dollars ($50.00) per month for each school month that such pupil shall so obtain board and lodging at a place other than the residence of the pupil for the purpose of attending a school. (1955, c. 1372, art. 21, s. 10; 1973, c. 932.)

Editor's Note. — The 1973 amendment substituted "fifty dollars ($50.00)" for "twenty-five dollars ($25.00)" near the end of subsection (b).

§ 115-190. Contracts for transportation. — Any county or city board of education may, in lieu of the operation by it of public school buses, enter into

a contract with any person, firm or corporation for the transportation by such person, firm or corporation of pupils enrolled in the public schools of such county or city administrative unit for the same purposes for which such county or city administrative unit is authorized by this Subchapter to operate public school buses. Any vehicle used by such person, firm or corporation for the transportation of such pupils shall be constructed and equipped as provided in this Subchapter and in the regulations promulgated pursuant to this Subchapter by the State Board of Education, and the driver of such vehicle shall possess all of the qualifications prescribed by such rules and regulations of the State Board of Education. In the event that any county or city board of education shall enter into such a contract, the board may use for such purposes any funds which it might use for the operation of school buses owned by the board, and the tax levying authorities of the county or of the city may provide in the county or city budget such additional funds as may be necessary to carry out such contracts. (1955, c. 1372, art. 21, s. 11.)

§ 115-190.1. Transportation continued for area annexed to municipality or included by consolidation of municipalities. — In each and every area of the State where school bus transportation of pupils to and from school is now being provided, such school transportation shall not be discontinued by any State or local governmental agency for the sole reason that the corporate limits of any municipality have been extended to include such area since February 6, 1957, and school bus transportation of pupils shall be continued in the same manner and to the same extent as if such area had not been included within the corporate limits of a municipality.

In each and every area of the State where school bus transportation of pupils to and from school is now being provided, such school transportation shall not be discontinued by any State or local governmental agency for the sole reason that two or more municipalities have consolidated and the corporate limits of the new, consolidated municipality includes such area, and school bus transportation of pupils shall be continued in the same manner and to the same extent as if such area had not been consolidated and had not been included within the corporate limits of the new, consolidated municipality. (1957, c. 1375; 1963, c. 917; c. 990, s. 4; 1965, c. 1095, s. 4; 1967, c. 877.)

This section is unconstitutional as creating an unreasonable statutory classification. Sparrow v. Gill, 304 F. Supp. 86 (M.D.N.C. 1969).

This section is unconstitutional. Its fatal flaw is the arbitrary date of February 6, 1957, which is wholly unrelated to the end apparently sought to be achieved: the allocation of limited transportation funds for the benefit of those students most needing bus transportation. To conclude that urbanization is more pronounced in those areas which were within municipal boundaries on February 6, 1957, than in those then without it, is to posit the timeliness of annexation efforts. This cannot be done. Sparrow v. Gill, 304 F. Supp. 86 (M.D.N.C. 1969).

Denying transportation to urban pupils residing in areas which were within the boundaries of a municipality on February 6, 1957, while providing it for those living in areas annexed by the city after February 6, 1957, violates the equal protection clause of the Constitution of the United States. Styers v. Phillips, 277 N.C. 460, 178 S.E.2d 583 (1971).

§ 115-191. Use of school buses by State guard or national guard. — When requested to do so by the Governor, the board of education of any county or city administrative unit is authorized and directed to furnish a sufficient number of school buses to the North Carolina State guard or the national guard for the purpose of transporting members of the State guard or members of the national guard to and from authorized places of encampment, or to and from places to which members of the State guard or members of the national guard are ordered to proceed for the purpose of suppressing riots or insurrections, repelling invasions or dealing with any other emergency. Public school buses so furnished

by any county or city administrative unit to the North Carolina State guard or the national guard shall be operated by members or employees of the State or national guard, and all expense of such operation, including any repair or replacement of any bus occasioned by such operation, shall be paid by the State from the appropriations available for the use of the State guard or the national guard. (1955, c. 1372, art. 21, s. 12.)

§ 115-192. Payment of awards to school bus drivers pursuant to the Workmen's Compensation Act. — In the event that the Industrial Commission shall make an award pursuant to the Workmen's Compensation Act against any county or city board of education on account of injuries to or the death of a school bus driver arising out of and in the course of his employment as such driver, the county or city board of education shall draw a requisition or requisitions upon the State Board of Education for the amount required to pay such award. The State Board of Education shall honor such requisition to the extent that it shall have in its hands, or subject to its control, available funds which have been or shall thereafter be appropriated by the General Assembly for the support of the nine months school term. It shall be the duty of the county or city board of education to apply all funds received by it from the State Board of Education pursuant to such requisition to the payment of such award. Neither the State nor the State Board of Education shall be deemed the employer of such school bus driver, nor shall the State or the State Board of Education be liable to any school bus driver or any other person for the payment of any claim, award, or judgment under the provisions of the Workmen's Compensation Act or of any other law of this State for any injury or death arising out of or in the course of the operation by such driver of a public school bus. Neither the county or city board of education, the county or city administrative unit, nor the tax levying authorities for the county or city administrative unit shall be liable for the payment of any award made pursuant to the provisions of this section in excess of the amount paid upon such requisition by the State Board of Education, nor shall the county or city board of education, the county or city administrative unit, nor the said tax levying authorities be required to provide or carry workmen's compensation insurance for such purpose. (1955, c. 1292.)

ARTICLE 23.

Certain Injuries to School Children Compensable.

§ 115-193. State Board of Education authorized to pay claims. — The State Board of Education is hereby authorized and directed to set up in its budget for the operation of the public schools of the State a sum of money which it deems sufficient to pay the claims hereinafter authorized and provided for. The Board is hereby authorized and directed to pay out of said sum provided for this purpose to the parent, guardian, executor or administrator of any pupil who may be injured or whose death results from injuries received while such pupil is boarding, riding on, or alighting from a school bus owned and operated by any county or city administrative unit, and transporting pupils to or from the public schools of the State, or sustained as a result of the operation of a school bus on the grounds of the school in which such pupil is enrolled, medical, hospital, surgical, and funeral expenses incurred on account of such injuries or death of such pupil in an amount not to exceed six hundred dollars ($600.00). This section shall not apply to injuries sustained as a result of the operation of any activity bus as distinguished from a regular school bus. (1955, c. 1372, art. 22, s. 1.)

§ 115-194. Approval of claims by State Board of Education final. — The State Board of Education is hereby authorized and empowered, under such rules and regulations as it may promulgate, to approve any claim authorized herein,

and when such claim is so approved, such action shall be final: Provided, that the total benefits for hospitalization, medical treatment, and funeral expenses shall in no case exceed six hundred dollars ($600.00) for any pupil so injured. (1955, c. 1372, art. 22, s. 2.)

§ 115-195. Claims paid without regard to negligence of driver; amounts paid out declared lien upon civil recoveries for child. — The claims authorized herein shall be paid by the said State Board of Education, regardless of whether the injury received by said pupil shall have been due to the negligence of the driver of the said school bus: Provided, that whenever there is recovery on account of said accident by the father, mother, guardian, or administrator of such pupil against any person, firm or corporation, the amount expended by the State Board of Education hereunder shall constitute a paramount lien on any judgment recovered by said parent, guardian, or administrator, and shall be discharged before any money is paid to said parent, guardian, or administrator, on account of said judgment. (1955, c. 1372, art. 22, s. 3.)

§ 115-196. Disease and injuries incurred while not riding on bus not compensable. — Nothing in this Article shall be construed to mean that the State shall be liable for sickness, or disease, or for personal injuries sustained otherwise than by reason of the operation of such bus. (1955, c. 1372, art. 22, s. 4.)

§ 115-197. Claims must be filed within one year. — The right to compensation as authorized herein shall be forever barred unless a claim be filed with the State Board of Education within one year after the accident, and if death results from the accident, unless a claim be filed with the said Board within one year thereafter. (1955, c. 1372, art. 22, s. 5.)

SUBCHAPTER X. INSTRUCTION.

ARTICLE 24.

Courses of Study.

§ 115-198. Standard course of study for each grade. — Upon the recommendation of the State Superintendent, the State Board of Education shall adopt a standard course of study for each grade in the elementary school and in the high school. In the course of study adopted by the State Board, the Board may establish a program of continuous learning based upon the individual child's need, interest, and stages of development, so that the program has a nongraded structure of organization. These courses of study shall set forth what subjects shall be taught in each grade, and outline the basal and supplementary books on each subject to be used in each grade.

The State Superintendent shall prepare a course of study for each grade of the school system which shall outline the appropriate subjects to be taught, together with directions as to the best methods of teaching them as guidance for the teachers. There shall be included in the course of study for each grade outlines and suggestions for teaching the subject of Americanism; and in one or more grades, as directed by the State Superintendent of Public Instruction, outlines for the teaching of harmful or illegal drugs including alcohol.

County and city boards of education shall require that all subjects in the course of study, except foreign languages, be taught in the English language, and any teacher or principal who shall refuse to conduct his recitations in the English language may be dismissed. (1955, c. 1372, art. 23, s. 1; 1969, c. 487, s. 1; 1971, c. 356.)

§ 115-198.1: Repealed by Session Laws 1973, c. 603, s. 3.

Cross Reference. — For present provisions as to kindergartens, see §§ 115-205.11 through 115-205.13.

§ 115-199. Adult education. — When in the judgment of the State Board of Education a program of adult education should be established as a part of the public school system and when appropriations have been made therefor, there shall be organized and administered under the general supervision of the State Superintendent of Public Instruction, course in adult education: Provided, that county and city boards of education, in their discretion, may institute and support such programs from local funds upon the approval of the State Board of Education. (1955, c. 1372, art. 23, s. 2; 1963, c. 448, s. 24.)

§ 115-200. Instruction for handicapped persons. — There shall be organized and administered under the general supervision of the State Superintendent of Public Instruction a program of special courses of instruction for handicapped, crippled, and other classes of individuals requiring special types of instruction. In carrying out the provisions of this section, the State Superintendent may appoint such personnel as may be needed:

(1) To aid county and city boards of education in the organization of classes for the handicapped.

(2) To recommend plans for the establishment of day classes in schools, home instruction and other methods of special education for handicapped persons, and outline the curriculum to be pursued.

(3) To provide the recommendation of competent medical and psychological authorities as to the eligibility of handicapped persons to take said courses.

(4) To arrange where necessary for a handicapped child or adult person to attend school in an administrative unit or district other than the one in which he resides.

(5) To cooperate with the Department of Human Resources, the State schools for the blind and deaf, the State sanatoria, the children's hospitals, or other agencies concerned with the welfare and health of handicapped persons.

Any child, including those children under the age of six years, or adult who has been determined to be physically or mentally handicapped shall be eligible for such special instruction as may be appropriate to his need and which is available in the area of his residence. Classes of special education may be established and organized in any administrative unit or district which has one or more handicapped individuals when the approval of the State Superintendent of Public Instruction and the State Board of Education has been given. With the same approval, itinerant teachers may be employed to give special instruction.

The State Board of Education is authorized to provide from funds available for public schools a program of special education outlined by the State Department of Public Instruction and approved by the State Board of Education. The State Board is authorized to receive contributions and donations to be used in conjunction with any appropriations that may be made to carry out the program of special education. (1955, c. 1372, art. 23, s. 3; 1969, c. 982; 1971, c. 645; 1973, c. 476, ss. 128, 138.)

Editor's Note. — The 1973 amendment substituted "Department of Human Resources" for "State Department of Public Welfare, the State Board of Health" in subdivision (5).

§ 115-201. Instruction in driver training and safety education. — There shall be organized and administered under the general supervision of the State Superintendent of Public Instruction a program of driver training and safety education in the public schools of this State, said courses to be noncredit courses taught by instructors approved by the State Department of Public Instruction. (1953, c. 1196; 1955, c. 1372, art. 23, s. 4; 1959, c. 573, s. 16.)

§ 115-202. Boards of education required to provide courses in operation of motor vehicles. — (a) Course of Training and Instruction Required in Public High Schools. — The State Board of Education and county and city boards of education in this State are hereby required to provide as a part of the program of the public high schools in this State a course of training and instruction in the operation of motor vehicles and to make such courses available for all persons of provisional license age, including public school students, nonpublic school students and out-of-school youths (persons under 18 years of age whose physical and mental qualifications meet license requirements) in conformance with course requirements and funds made available under the provisions of G.S. 20-88.1 and/or as hereinafter provided.

(b) Inclusion of Expense in Budget. — The county and city boards of education of every administrative unit are hereby authorized to include as an item of instructional service and as a part of the current expense fund of the budget of the several high schools under their supervision, the expense necessary to install and maintain such a course of training and instructing eligible persons in such schools in the operation of motor vehicles.

(c) Appropriations. — The boards of county commissioners in the several counties of the State and the governing bodies of all municipalities having power to appropriate and raise money by taxation and otherwise are hereby authorized to appropriate funds necessary to pay the expenses necessary to install and maintain in any public high school under their supervision a course of training and instruction for eligible students in such schools in the operation of motor vehicles, whether or not the county board of education or administrative unit shall have included the cost of the same in its budget request when submitted for approval.

(d) How Moneys Appropriated May Be Provided. — The board of county commissioners in the several counties of the State and the governing bodies of all municipalities having power to appropriate money and to levy taxes and raise money are hereby authorized to provide the moneys appropriated pursuant to this section or pursuant to any other general, special or public-local act providing for such course of instruction and training in any public high school, by taxation, or by sale or rental of any real or personal property owned by such county or other taxing unit, or by use of any surplus funds on hand or acquired from any source; and the special approval of the General Assembly is hereby given for the levying of taxes for such purpose and for providing funds for such purpose by the other means herein mentioned.

(e) Content of Course; What Persons Eligible. — The words "a course of training and instruction for eligible persons in the operation of motor vehicles" as applied to this section shall be construed to mean such course of instruction in the operation of motor vehicles as shall be prescribed or approved by the State Department of Public Instruction, provided that every such course shall include actual operation of motor vehicles by the persons eligible for same, under the supervision of a qualified instructor. Only such persons of the completed age of 14 years and six months, and as shall be approved by the principal of the school, shall be eligible for such course of instruction, subject to rules and regulations prescribed by the State Department of Public Instruction.

(f) Acts Ratified and Confirmed. — The acts of all boards of county commissioners and the governing bodies of all municipalities, the acts of all county and city boards of education, and the acts of the State Board of Education

heretofore done in connection with providing courses of training and instruction in the operation of motor vehicles in this State, including the appropriation and expenditure of funds for such purpose, are hereby ratified and confirmed. (1955, c. 817; 1965, c. 397.)

§ 115-203. Instruction in music education; supervisor and area supervisor. — There shall be organized and administered under the general supervision of the State Superintendent of Public Instruction a program of music education in the public schools of the State, and in the various communities in which said public schools are located. The Department of Public Instruction is hereby authorized to employ a supervisor of music education and six area music supervisors in its program of promotion of music education. It shall be the duty of the supervisors to train leaders from the teachers, to hold conferences throughout the State with groups of teachers and demonstrate proper methods of teaching music, and to organize and direct leadership in music programs in the schools and in the communities of the State. (1955, c. 1372, art. 23, s. 5.)

§ 115-204. Instruction in physical education and health education. — There shall be organized and administered under the general supervision of the State Superintendent of Public Instruction a comprehensive program of physical education and of health education including scientific instruction in the subjects of harmful or illegal drugs including alcohol. It shall be the duty of teachers and principals in connection with this program to screen and observe all pupils in order to detect signs and symptoms of deviation from normal, and to record and report the results of their findings in accordance with the established policies and procedures and upon blanks furnished for this purpose. The State Superintendent of Public Instruction, with the Department of Human Resources cooperating, shall make rules and regulations regarding screening and observation by teachers and for medical and psychiatric examination of pupils attending the public schools. Correction of chronic remediable defects for underprivileged children may be paid out of school health funds appropriated by the General Assembly to the State Board of Education for allocation to school administrative units in accordance with policies agreed upon by the State Superintendent of Public Instruction and the Department of Human Resources, and as otherwise provided by law. The Department of Human Resources shall provide free dental treatment for as many underprivileged school children as possible each year. (1955, c. 1372, art. 23, s. 6; 1971, c. 356; 1973, c. 476, s. 128.)

Editor's Note. — The 1973 amendment substituted "Department of Human Resources" for "State Board of Health."

§ 115-205. Observance of special days. — The State Superintendent of Public Instruction is hereby authorized and directed to provide suitable material for the appropriate observance in all the public schools of the State of all special days which are celebrated from year to year. All literature necessary for the proper observance of the days specified in this section shall be prepared by the Superintendent of Public Instruction and printed at the expense of the State. The Superintendent of Public Instruction may fix a later or an earlier date for the observance of any special day, the observance of which is required for a specific date, if it shall appear to him to be more convenient; and he may combine the programs so as to require the observance of any two or more of the special days at the same time.

The special days appropriate for observance in North Carolina are:

(1) North Carolina Day on October the twelfth.

(2) Temperance or Law and Order Day on the fourth Friday in January.

(3) Arbor Day on the Friday following the fifteenth day of March.

(4) The birthdays of George Washington, Robert Edward Lee, and Thomas Jonathan (Stonewall) Jackson.
(5) Veterans Day, Memorial Day, and such other days as may be deemed of educational and patriotic value to the children and citizens of the State. (1955, c. 1372, art. 23, s. 7.)

Cross References. — As to observance of "Indian Day" in the public schools, see § 147-18. For provisions as to Sir Walter Raleigh Day, see § 143B-75.

§§ 115-205.1 to 115-205.10: Reserved for future codification purposes.

ARTICLE 24A.

Kindergartens.

§ 115-205.11. Establishment and maintenance of kindergartens. — County and city boards of education shall provide for their respective administrative unit kindergartens as a part of the public school system for all children living in the school administrative unit who are eligible for admission pursuant to G.S. 115-205.12 provided that funds are available from State, local, federal or other sources to operate a kindergarten program as provided in this Article.

All kindergarten programs so established shall be subject to the supervision of the State Department of Public Instruction and shall be operated in accordance with the standards adopted by the State Board of Education, upon recommendation of the State Superintendent of Public Instruction.

Among the standards to be adopted by the State Board of Education shall be a provision that the Board will allocate funds for the purpose of operating and administering kindergartens to each school administrative unit in the State based on the average daily membership for the best continuous three out of the first four school months of pupils in the first grade during the last school year in that respective school administrative unit.

Provided, that for the 1973-74 school year, sufficient funds shall be allocated by the Board to each county and city school administrative unit to operate a minimum of two kindergarten classes in each administrative unit. Provided further, that for each subsequent school year beginning with the 1974-75 school year, the Board shall allocate sufficient funds to each county and city school administrative unit to add at least one additional kindergarten class until all eligible children are enrolled. (1973, c. 603, s. 1.)

§ 115-205.12. Eligibility. — Beginning with the school year 1978-1979, in accordance with the provisions of G.S. 115-205.11, any child who has passed the fifth anniversary of his birth on or before October 15 of the year in which he enrolls shall be eligible for enrollment in kindergarten. Provided, however, that for the school years 1973-1974 through 1978-1979, the State Board of Education shall have enrolled in kindergartens that percentage on a statewide basis of the eligible children at the beginning of each school year in accord with the following table:

Enrollment Date	*Enrollment Percentage*
September, 1973	Not less than 16%
September, 1974	Not less than 25%
September, 1975	Not less than 45%

Enrollment Date	*Enrollment Percentage*
September, 1976	Not less than 65%
September, 1977	Not less than 85%
September, 1978	Not less than 100%

Among the standards to be adopted by the State Board of Education in administering the enrollment of the eligible children on the schedule set forth herein, the State Board of Education shall consider the availability and location of facilities in each administrative unit, the number of eligible children in each administrative unit, the transportation system in each administrative unit, appropriate birth-date groupings and other pertinent educational criteria.

Provided further, that a county and city board of education may, with the approval of the State Board, submit annually a plan for admission of five-year olds to the kindergarten program without following the time schedule set out hereinabove. (1973, c. 603, s. 1; c. 916.)

Editor's Note. — The 1973 amendment inserted "on or" preceding "before" in the first sentence of the first paragraph.

§ 115-205.13. Kindergartens need not be operated under certain conditions. — Notwithstanding any other provision of law to the contrary, subject to the approval of the State Board of Education, any county or city board of education may elect not to establish and maintain a kindergarten program. Any funds allocated to a county or city board of education which does not operate a kindergarten program may be reallocated by the State Board of Education, within the discretion of the Board, to a county or city board of education which will operate such a program. (1973, c. 670, s. 1.)

ARTICLE 25.

Selection and Adoption of Textbooks.

§§ 115-206 and 115-207 to 115-215: Repealed by Session Laws 1969, c. 519, s. 2.

ARTICLE 25A.

Textbooks and Instructional Material.

§ 115-206.1. Textbook needs are determined by course of study. — When the State Board of Education has adopted, upon the recommendation of the State Superintendent of Public Instruction, a standard course of study at each instructional level in the elementary school and the secondary school, setting forth what subjects shall be taught at each level, it shall proceed to select and adopt textbooks. Textbooks adopted in accordance with the provisions of this Article shall be used by the public schools of the State. (1955, c. 1372, art. 24, s. 1; 1959, c. 693, s. 1; 1969, c. 519, s. 1.)

§ 115-206.2. State Board of Education to select and adopt textbooks. — The Board shall select and adopt for a period determined to be most advantageous to the State public school system for the exclusive use in the public schools of North Carolina the basic textbooks or series of books needed for instructional purposes at each instructional level on all subject matter required by law to be taught in elementary and secondary schools of North Carolina. (1955, c. 1372, art. 24, s. 2; 1959, c. 693, s. 2; 1965, c. 584, s. 18; 1969, c. 519, s. 1.)

§ 115-206.3. Appointment of Textbook Commission. — Shortly after assuming office, the Governor, upon recommendation of the State Superintendent, shall appoint a Textbook Commission of 12 members who shall hold office for four years, or until their successors are elected and qualified. The Governor shall fill all vacancies by appointment for the unexpired term. Six of the members shall be teachers or principals in the elementary grades; five shall be teachers or principals in the high school grades; and one shall be a superintendent of a county or city school administrative unit. The Commission shall elect a chairman, subject to the approval of the State Superintendent. The members shall be entitled to compensation for each day spent on the work of the Commission as approved by the Board and to reimbursement for travel and subsistence expense incurred in the performance of their duties at rates specified in G.S. 138-5(b). (1955, c. 1372, art. 24, s. 3; 1969, c. 519, s. 1.)

State Government Reorganization. — The Textbook Commission was transferred to the Department of Public Education by § 143A-48, enacted by Session Laws 1971, c. 864.

§ 115-206.4. Commission to evaluate books offered for adoption. — The members of the Commission who are teachers or principals in the elementary grades shall evaluate all textbooks offered for adoption in the elementary grades. The members who are teachers or principals in the high schools shall evaluate all books offered for adoption in the high school grades.

Each member shall examine carefully and file a written evaluation of each book offered for adoption in the category for which he is responsible.

The evaluation report shall give special consideration to the suitability of the book to the instructional level for which it is offered, the content or subject matter, and other criteria prescribed by the Board.

Each evaluation report shall be signed by the member making the report and filed with the Board not later than a day fixed by the Board when the call for adoption is made. (1955, c. 1372, art. 24, s. 4; 1969, c. 519, s. 1.)

§ 115-206.5. Selection of textbooks by Board. — At the next meeting of the Board after the reports have been filed, the Textbook Commission and the Board shall jointly examine the reports. From the books evaluated the Board shall select those that it thinks will meet the teaching requirements of the State public schools in the instructional levels for which they are offered. The Board shall then request sealed bids from the publishers on the selected books.

The Board shall make all necessary rules and regulations concerning requests for bids, notification to publishers of calls for adoption, execution and delivery of contracts, requirement of performance bonds, cancellation causes, and such other material matters as may affect the validity of the contracts. (1955, c. 1372, art. 24, s. 5; 1969, c. 519, s. 1.)

§ 115-206.6. Adoption of textbooks and contracts with publishers. — The publishers' sealed bids shall be opened in the Board's presence at the next regular meeting after the Board has requested the submission of bids. The Board may then adopt the books required by the courses of study and enter into contracts with the publisher of adopted books. It may refuse to adopt any of the books offered at the prices bid and call for new bids. When bids are accepted and a contract entered into, the contract may require, in the Board's discretion, that the total sales of each book in the State of North Carolina be reported annually to the Board. (1955, c. 1372, art. 24, s. 6; 1969, c. 519, s. 1.)

§ 115-206.7. Continuance and discontinuance of contracts with publishers. — When an existing or future contract expires, the Board may, with the publisher's approval, continue the contract for any particular book or books for a period not less than one or more than five years. If a publisher desires to

terminate a contract that has been extended beyond the original contract period, he shall give notice to the Board 90 days prior to May 1. The Board may then proceed to a new adoption. (1955, c. 1372, art. 24, s. 7; 1969, c. 519, s. 1.)

§ 115-206.8. Procedure for change of textbook. — The Superintendent may at any time communicate to the Board that a particular book is unsatisfactory for the schools, whereupon the Board may call for a new selection and adoption. If the Board votes to change a textbook, it shall give the publisher 90 days' notice prior to May 1, after which it may adopt a new book or books on the subject for which a book is sought. (1955, c. 1372, art. 24, s. 7; 1969, c. 519, s. 1.)

§ 115-206.9. Advice from and suits by Attorney General. — The form and legality of contracts between the Board and publishers of textbooks shall be subject to the approval of the Attorney General.

When requested by the Board, the Attorney General shall bring suit against any publisher who fails to keep his contract as to prices, distribution, adequate supply of books in the edition adopted, or in any other way violates the terms of his contract. The suit shall be brought for an amount sufficient to enforce the contract or to compensate the State for any loss sustained by the publisher's failure to keep his contract. (1955, c. 1372, art. 24, s. 8; 1969, c. 519, s. 1.)

§ 115-206.10. Publishers to register. — Any publisher who submits books for adoption shall register in the office of the State Superintendent of Public Instruction the names of all agents or other employees authorized to represent that company in the State, and this registration list shall be open to the public for inspection. (1955, c. 1372, art. 24, s. 9; 1969, c. 519, s. 1.)

§ 115-206.11. Sale of books at lower price reduces price to State. — Every contract made by the Board with the publisher of any school textbook on the state-adopted list shall be deemed to have written therein a condition providing that if that publisher, during the life of his contract with this State, contracts with any other governmental unit or places that textbook on sale anywhere in the United States for a price less than that stipulated in his contract with the State of North Carolina, the publisher shall immediately furnish that textbook to this State at a price not greater than that for which the book is furnished, sold, or placed on sale anywhere else in the nation. (1955, c. 1372, art. 24, s. 10; 1969, c. 519, s. 1.)

§ 115-206.12. Powers and duties of the State Board of Education in regard to textbooks. — The children of the public elementary and secondary schools of the State shall be provided with free basic textbooks within the appropriation of the General Assembly for that purpose. The State Board of Education is directed to request sufficient appropriations from the General Assembly to implement this directive.

The State Board of Education shall administer a fund and establish rules and regulations necessary to:

(1) Acquire by contract such basic textbooks as are or may be on the adopted list of the State of North Carolina which the Board finds necessary to meet the needs of the State's public school system and to carry out the provisions of this Article.

(2) Provide a system of distribution of these textbooks and distribute the books that are provided without using any depository or warehouse facilities other than that operated by the State Board of Education.

(3) Provide for the free use, with proper care and return, of elementary and secondary basic textbooks. The title of said books shall be vested in the State. (1955, c. 1372, art. 25, s. 1; 1965, c. 584, s. 19; 1969, c. 519, s. 1.)

§ 115-206.13. State Board of Education authorized to discontinue handling supplementary and library books. — The State Board of Education may

discontinue the adoption of supplementary textbooks and, at the expiration of existing contracts, may discontinue the purchase, warehousing, and distribution of supplementary textbooks. The Board may also discontinue the purchase and resale of library books. Funds appropriated to the State Board of Education for supplementary textbooks shall be transferred to the State Nine Months School Fund for allotment to each school administrative unit, based on its average daily membership, for the purchase of supplementary textbooks, library books, periodicals, and other instructional materials. (1969, c. 519, s. 1.)

§ 115-206.14. Local boards of education to provide for local operation of the textbook program and the selection and procurement of other instructional materials. — (a) Local boards of education shall adopt rules and regulations not inconsistent with the policies of the State Board of Education concerning the local operation of the textbook program.

(b) Local boards of education shall adopt written policies concerning the procedures to be followed in its school administrative unit for the selection and procurement of supplementary textbooks, library books, periodicals, and other instructional materials needed for instructional purposes in the public schools of that unit. Supplementary books and other instructional materials shall neither displace nor be used to the exclusion of basic textbooks.

(c) Funds allocated by the State Board of Education or appropriated in the current expense or capital outlay budgets of the school administrative units, may be used for the above-stated purposes. (1969, c. 519, s. 1.)

§ 115-206.15. Legal custodians of books furnished by State. — Local boards of education are the custodians of all books furnished by the State. They shall provide adequate and safe storage facilities for the proper care of these books and emphasize to all students the necessity for proper care of textbooks. (1955, c. 1372, art. 25, s. 3; 1969, c. 519, s. 1.)

§ 115-206.16. Rental fees for textbooks prohibited; damage fees authorized. — No local board of education may charge any pupil a rental fee for the use of textbooks. Damage fees may be charged for abuse or loss of textbooks under rules and regulations promulgated by the State Board of Education. All money collected on state-owned books as damage fees or from the sale of books under the provisions of this Article shall be paid quarterly as collected to the State Board of Education. (1969, c. 519, s. 1.)

§ 115-206.17. Duties and authority of superintendents of local administrative units. — The superintendent of each administrative unit, as an official agent of the State Board of Education, shall administer the provisions of this Article and the rules and regulations of the Board insofar as they apply to his unit. The superintendent of each administrative unit shall have authority to require the cooperation of principals and teachers so that the children may receive the best possible service, and so that all the books and moneys may be accounted for properly. If any principal or teacher fails to comply with the provisions of this section, his superintendent shall withhold his salary vouchers until the duties imposed by this section have been performed.

If any superintendent fails to comply with the provisions of this section, the State Superintendent, as secretary to the State Board of Education, shall notify the State Board of Education and the State Treasurer. The State Board and the State Superintendent shall withhold the superintendent's salary vouchers, and the State Treasurer shall make no payment until the State Superintendent notifies him that the provisions of this section have been complied with. (1955, c. 1372, art. 25, s. 8; 1969, c. 519, s. 1.)

§ 115-206.18. Right to purchase. — Any parent, guardian, or person in loco parentis may purchase any instructional material needed for any child in the

public schools of the State from the board of education of the school administrative unit in which the child is enrolled or, in the case of basic textbooks, from the State Board of Education. (1955, c. 1372, art. 25, s. 2; 1969, c. 519, s. 1.)

ARTICLE 26.

Providing Basal and Supplemental Textbooks and Instructional Materials.

§§ 115-216 to 115-228: Repealed by Session Laws 1969, c. 519, s. 2.

ARTICLE 27.

Vocational Education.

§ 115-229. Acceptance of benefits of Federal Vocational Education Act. — The State of North Carolina hereby accepts all the provisions and benefits of acts passed by the Congress of the United States providing federal funds for states for vocational and technical education programs: Provided, however, that the State Board of Education is not authorized to accept any such funds upon any condition that the public schools of this State shall be operated contrary to any provision of the Constitution or statute of this State. (1955, c. 1372, art. 26, s. 1; 1963, c. 448, s. 24.)

§ 115-230. Powers and duties of Board. — The State Board of Education shall have all necessary authority to cooperate with the United States Office of Education in the administration of the federal acts assisting vocational and technical education, to administer any legislation pursuant thereto enacted by the State of North Carolina, and to administer the funds provided by the federal government and the State of North Carolina for the promotion of vocational education. The Board shall have full authority to formulate plans for the promotion of vocational education in such subjects as are an essential and integral part of the public school system of education of the State of North Carolina, and to provide for the preparation of teachers in such subjects. It shall have full authority to fix the compensation, subject to the approval of the Personnel Department, of such officials and assistants as may be necessary to administer the federal act and this Article for the State of North Carolina, and to pay such compensations and other necessary expenses of administration from funds appropriated. It shall have authority to make studies and investigations relating to vocational education in such subjects; to publish the results of such investigations, and to issue other publications as seem necessary to the Board; to promote and aid in the establishment by local communities of schools, departments, or classes giving instruction in such subjects; to cooperate with local communities in the maintenance of such schools, departments, or classes; to prescribe qualifications for teachers, directors, and supervisors of such subjects; to cooperate in the maintenance of classes supported and controlled by public institutions for the preparation of teachers, directors and supervisors of such subjects, or to maintain such classes under its own direction and control; to establish and determine by general regulations the qualifications to be possessed by persons engaged in the training of vocational teachers. (1955, c. 1372, art. 26, s. 2; 1959, c. 915, s. 2; 1963, c. 448, s. 24.)

§ 115-230.1. Development of Industrial Education Program. — The State Board of Education is authorized and directed to develop for the public schools of the State a more diversified and comprehensive program of instruction in basic work skills, applied economics, and industrial education, and to introduce in various public schools in the State such program on an experimental basis

under regulations, standards, and procedures promulgated by the Board. The Board may provide for the in-service training or retraining of vocational and other teachers in cooperation with institutions of higher education in preparation for the program herein authorized. The Board may provide, under standards prescribed by it, funds, on a matching basis or otherwise, for both current expense costs and equipment necessary in the conduct of the program. The title to any equipment provided a local county or city board of education for this purpose shall be held by the county or city board of education to which the funds are allocated. (1963, c. 841.)

§ 115-231. State Superintendent to enforce Article. — The State Superintendent of Public Instruction shall serve as chief administrative officer of the State Board of Education, and shall designate, by and with the advice and consent of the State Board of Education, such assistants as may be necessary to properly carry out the provisions of this Article. The State Superintendent shall also carry into effect such rules and regulations as the Board may adopt, and shall prepare such reports concerning the condition of vocational education in the State as the Board may require. (1955, c. 1372, art. 26, s. 3; 1971, c. 704, s. 13.)

§ 115-232. State appropriation for vocational education. — The State of North Carolina appropriates out of the general fund a sum of money for each fiscal year at least equal to the maximum sum which may be allotted to the State of North Carolina from the federal treasury under the provisions of the federal vocational and technical education acts and amendments thereto: Provided, that only such portion of the above State appropriation shall be used as may be necessary to carry on the work outlined in this Article to meet the federal requirements or to meet requirements approved by the State Board of Education. (1955, c. 1372, art. 26, s. 4; 1963, c. 448, s. 24.)

§ 115-233. State Treasurer authorized to receive and disburse vocational education funds. — The State Treasurer is hereby designated and appointed custodian of all moneys received by the State from the appropriation made by said act of Congress or any other acts of Congress passed subsequent thereto, and he is authorized to receive and to provide for the proper custody of the same and to make disbursements thereof in the manner provided for in said acts and for the purpose therein specified. He shall also pay out moneys appropriated by the State of North Carolina for the purpose of carrying out the provisions of this Article upon the order of the State Board of Education. (1955, c. 1372, art. 26, s. 5.)

§ 115-234. Cooperation of county and city authorities with State Board. — County and city boards of education may cooperate with the State Board of Education in the establishment of classes giving instruction in vocational subjects, and may use moneys raised by public taxation in the same manner as moneys are used for other public school purposes: Provided, that vocational teachers shall be employed in the same manner as are other public school teachers. (1955, c. 1372, art. 26, s. 6; 1963, c. 448, s. 24.)

Constitutionality. — A county technical institute which provides adult vocational and general educational training is a part of the public school system of the State, and the expenditure of funds by a county as authorized by this section for maintenance of a building used by such technical institute did not violate former N.C. Const., Art. IX, § 5 (now N.C. Const. Art. IX, § 7). Benvenue Parent-Teacher Ass'n v. Nash County Bd. of Educ., 4 N.C. App. 617, 167 S.E.2d 538 (1969).

The expenditure of funds by a county for maintenance of a building used by a county technical institute is fully authorized by statute and was not at odds with the meaning or purpose of former N.C. Const., Art. IX, § 5 (now N.C. Const. Art. I, § 7). Benvenue Parent-Teacher Ass'n v. Nash County Bd. of Educ., 4 N.C. App. 617, 167 S.E.2d 538 (1969).

§ 115-235. High schools offering vocational agriculture authorized to acquire lands for forest study. — (a) County and city boards of education are hereby authorized and empowered to acquire by gift, purchase or lease for not less than 20 years, a parcel of woodland or open land of not more than 20 acres suitable for forest planting or other vocational training.

(b) Each deed for such land shall be made to "The ..... County Board of Education" for schools that are in the county administrative unit, and to "The ..... City Board of Education" for city schools undertaking forest study or other vocational training, and the title to such land shall be examined and approved by the county attorney.

(c) Any school forest thus acquired shall be placed under the management of the department of vocational agriculture of the school, to be handled in accordance with plans approved by some available publicly employed forester. (1955, c. 1372, art. 26, s. 7.)

§ 115-235.1. Development of program in middle and lower grades. — The State Board of Education shall develop, upon the recommendation of the State Superintendent of Public Instruction, prevocational and industrially oriented practical arts programs for the middle grades of the public school system as funds appropriated for this purpose will permit. A program of instruction interwoven into the curriculum, providing a thorough introduction to the world of work, may also be developed for the lower grades. (1969, c. 1180.)

ARTICLE 28.

Textile Training School.

§§ 115-236 to 115-239: Transferred to G.S. 115A-39 to 115A-42 by Session Laws 1963, c. 448, s. 30.

ARTICLE 29.

Vocational Training in Building Trades.

§ 115-240. Use of funds for purchase of building sites, materials, and for acquiring skilled services. — County and city boards of education are authorized to use supplementary tax funds or other local funds available for the support of vocational education to purchase suitable building sites on which dwellings or other buildings are to be constructed by vocational building trade classes of each public school operated by said county or city board of education. Such city and county boards of education are authorized to use such funds for each school to pay the fees necessary in securing and recording deeds to such property for each public school operated by said county and city boards of education and to purchase all material needed to complete the construction of buildings by vocational building trade classes: Provided, however, that the cost of materials for any one project shall not exceed twenty thousand dollars ($20,000).

Local school administrative units are authorized to expend such funds in acquiring skilled services, including electrical, plumbing, heating, sewer, water, transportation, grading and landscaping needed in the construction and completion of buildings beyond those which can be supplied by the students in such vocational trades classes. (1955, c. 1372, art. 28, s. 1; 1971, c. 644.)

§ 115-241. Sale of buildings constructed by building trades classes; disposition of proceeds. — When any such building is completed, the governing body of the local school administrative unit, upon finding that such building is not needed for public school purposes, shall sell the same at public auction in

the same manner and by the same procedure as is provided in subsection (a) of G.S. 115-126. The proceeds from the sale of such projects may be kept in a revolving fund by said unit to be used in succeeding years to finance similar building projects: Provided, that the board of education of the administrative unit may allocate from the profits from such projects funds to purchase equipment needed by the building trades classes. In case this type of activity is abandoned, the moneys accumulated shall be paid into the school fund of the county or city administrative unit from which the original appropriation was made. (1955, c. 1372, art. 28, s. 2.)

§ 115-242. Advisory committee on construction of projects. — The board of education of the administrative unit in which the proposed project of construction is to be undertaken shall appoint an advisory committee composed of five persons residing within the administrative unit and no project of a nature described in this Article shall be undertaken without the approval of a majority of the advisory committee. (1955, c. 1372, art. 28, s. 3.)

ARTICLE 30.

Vocational Rehabilitation of Persons Disabled in Industry or Otherwise.

§ 115-243. Acceptance of federal aid. — The State of North Carolina hereby accepts all of the provisions and benefits of an act passed by the Congress of the United States to provide for the promotion of vocational rehabilitation of persons disabled in industry or otherwise and their return to civil employment, approved as Public Law 565, August 3, 1954. Provided, however, that the State Board of Education is not authorized to accept any such funds upon any condition that the public schools of this State shall be operated contrary to any provision of the Constitution or statute of this State. (1955, c. 1372, art. 29, s. 1.)

§ 115-244. Authority to cooperate and plan program of rehabilitation. — The State Board of Education shall have all necessary authority to cooperate with the Federal Office of Vocational Rehabilitation in the administration of the act of Congress providing for the vocational rehabilitation of persons injured in industry or otherwise; to administer any legislation pursuant thereto enacted by the State of North Carolina; and to administer the funds provided by the federal government and the State of North Carolina. The Board shall have full authority to formulate plans for the promotion of vocational rehabilitation, and it shall have full authority, subject to the approval of the Personnel Department, to fix the compensation of such officials and assistants as may be necessary to administer the federal act and this article for the State of North Carolina; and to pay such compensation and other expenses of administration as are necessary from funds appropriated under this law. It shall have authority to make studies and investigations relating to vocational rehabilitation; to publish the results of such investigations and to issue other publications as seem necessary to the Board; to promote and aid in the establishment of schools, departments, or classes giving instruction in vocational subjects for rehabilitation purposes; and to prescribe qualifications for the teachers, directors, and supervisors of such subjects.

The State Board of Education, in order to carry out the provisions of this Article, shall secure the cooperation of federal, State, and local health agencies in getting a complete report of any persons under treatment in hospitals, clinics, dispensaries, health officers and private physicians, for any injury or disease that may render them permanently, physically, and vocationally handicapped to such an extent that they are, or will be, unable to support themselves. (1955, c. 1372, art. 29, s. 2.)

State Government Reorganization. — The vocational rehabilitation functions were transferred to the Department of Human Resources by former § 143A-146, enacted by Session Laws 1971, c. 864.

ARTICLE 31.

Private Business, Trade and Correspondence Schools.

§ 115-245. Definitions. — As used in this Article:

(1) "Board of education" means the North Carolina State Board of Education.

(2) "Correspondence school" means an educational institution privately owned and operated by an owner, partnership or corporation conducted for the purpose of providing, by correspondence, for a consideration, profit, or tuition, systematic instruction in any field or teaches or instructs in any subject area through the medium of correspondence between the pupil and the school, usually through printed or typewritten matter sent by the school and written responses by the pupil.

(3) "Persons" means any individual, association, partnership or corporation, and includes any receiver, referee, trustee, executor, or administrator as well as a natural person.

(4) "Private business school" or "business school" or "school" means an educational institution privately owned and operated by an owner, partnership or corporation, offering business courses for which tuition is charged, in such subjects as typewriting, shorthand (manual or machine), filing and indexing, receptionist's duties, key-punch, teletype, penmanship, bookkeeping, accounting, office machines, business arithmetic, English, business letter writing, salesmanship, personality development, leadership training, public speaking, real estate, insurance, traffic management, business psychology, economics, business management, and other related subjects of a similar character or subjects of general education when they contribute values to the objective of the course of study. Classes in any of the subjects herein referred to which are taught or coached in homes or elsewhere to five or less students are not included in the term "school" and shall be exempt from the requirements of this Article.

(5) "Private trade school" means an educational institution privately owned and operated by an owner, partnership or corporation, offering classes conducted for the purpose of teaching, for profit or for a tuition charge, any trade, technical, mechanical or industrial occupation or teaching any or several of the subjects needed to train youths or adults in the skills, technical knowledge, related industrial information, and job judgment, necessary for success in one or more skilled trades, industrial occupations or related occupations.

(6) "Superintendent" means the North Carolina State Superintendent of Public Instruction. (1955, c. 1372, art. 30, ss. 1, 2; 1957, c. 1000; 1961, c. 1175, s. 1.)

Purpose of Article. — The primary purpose of this Article is to control and regulate certain private schools — specifically business, trade and correspondence schools. State v. Williams, 253 N.C. 337, 117 S.E.2d 444 (1960).

§ 115-246. Exemptions. — It is the purpose of this Article to include all private schools operated for profit provided that the following schools shall be exempt from the provisions of this Article:

(1) Nonprofit schools conducted by bona fide eleemosynary or religious institutions.
(2) Schools maintained or classes conducted by employers for their own employees where no fee or tuition is charged.
(3) Courses of instruction given by any fraternal society, civic club, or benevolent order, which courses are not operated for profit.
(4) Any school for which there is another legally existing licensing board in this State.
(5) Any established university, professional, or liberal arts college, public or private high school approved by the State Department of Public Instruction, or any State institution which has heretofore offered, or which may hereinafter offer one or more courses covered in this Article, provided that the tuition fees and charges, if any, made by such university, college, high school, or State institution shall be collected by their regular officers in accordance with the rules and regulations prescribed by the board of trustees or governing body of such university, college, high school, or State institution; but provisions of the Article shall apply to all business schools, trade schools, or correspondence schools or branch schools, as defined in this Article, and operated within the State of North Carolina as such institutions, except schools for which there are other legally existing licensing boards. (1955, c. 1372, art. 30, ss. 1, 2; 1957, c. 1000; 1961, c. 1175, s. 2.)

§ 115-247. State Board of Education to administer Article; issuance of diplomas by schools; investigation and inspection; regulations and standards. — (a) The Board of Education, acting by and through the Superintendent of Public Instruction, shall have authority to administer and enforce this Article and to issue licenses to private schools and educational institutions, as the same are defined herein, whose sustained curriculum is of a grade equal to that prescribed for similar public schools and educational institutions of the State and which have met the standards set forth by the Board of Education, including but not limited to course offerings, adequate facilities, financial stability, competent personnel and legitimate operating practices.

(b) Upon approval by the Board of Education, any such private school or educational institution may by and with the approval of said Board of Education issue certificates and diplomas.

(c) The Board of Education, acting by and through the Superintendent of Public Instruction, shall formulate the criteria and the standards evolved thereunder for the approval of such schools or educational institutions, provide for adequate investigations of all schools applying for a license and issue licenses to those applicants meeting the standards fixed by the Board, maintain a list of schools approved under the provisions of this Article which list shall be available for the information of the public, and provide for periodic inspection of all schools licensed under the provisions of this Article. Through periodic reports required of licensed schools or branch schools and by inspections made by authorized representatives of the State Board of Education, the State Board of Education shall have general supervision over business, trade and correspondence schools in the State, the object of said supervision being to protect the health, safety and welfare of the public by having the licensed business, trade and correspondence schools maintain adequate, safe and sanitary school quarters, sufficient and proper facilities and equipment, sufficient and qualified teaching staff, and satisfactory programs of operation and instruction, and to have the school carry out its advertised promises and contracts made with its students and patrons. To this end the State Board of Education is authorized to issue such regulations and standards not inconsistent with the provisions of this Article as are necessary to administer the provisions of this Article. (1955, c. 1372, art. 30, s. 4; 1957, c. 1000; 1961, c. 1175, s. 3.)

Intent of Section. — It is the intent of this section that the State Board of Education pass upon the adequacy of the equipment, curricula and instructional personnel of the schools and protect students from fraud and breach of contract on the part of the schools and their agents and representatives. State v. Williams, 253 N.C. 337, 117 S.E.2d 444 (1960), decided under similar provisions of former law.

§ 115-248. License required; application for license; school bulletins; requirements for issuance of license; license restricted to courses indicated; supplementary applications. — (a) No person shall operate, conduct or maintain or offer to operate in this State a private school or educational institution as defined herein unless a license is first secured from the State Board of Education issued in accordance with the provisions of this Article and the rules and regulations promulgated by the Board of Education under the authority of G.S. 115-247. The license, when issued, shall constitute the formal acceptance by the Board of Education of the educational programs and facilities of each private school approved.

(b) Application for a license shall be filed in the manner and upon the forms prescribed and furnished by the Superintendent of Public Instruction for that purpose. Such application shall be signed by the applicant and properly verified and shall contain such of the following information as may apply to the particular school or branch school, for which a license is sought:

(1) The title or name of the school or classes, together with the name and address of the ownership and of the controlling officers thereof;
(2) The general field of instruction;
(3) The place or places where such instruction will be given;
(4) A specific listing of the equipment available for instruction in each field;
(5) The qualifications of instructors and supervisors;
(6) Financial resources available to equip and to maintain the school or classes;
(7) And such additional information as the Board may deem necessary to enable it to determine the adequacy of the program of instruction and matters pertaining thereto. Each application shall be accompanied by a copy of the current bulletin or catalog of the school which shall be in published form and certified by an authorized official of the school as being true and correct in content and policy. The school bulletin shall contain the following information:
    a. Identifying data, such as volume number and date of publication.
    b. Names of the institution and its governing body, officials and faculty.
    c. A calendar of the institution showing legal holidays, beginning and ending date of each quarter, term or semester, and other important dates.
    d. Institution's policy and regulations relative to leave, absences, class cuts, make-up work, tardiness and interruptions for unsatisfactory attendance.
    e. Institution's policy and regulations on enrollment with respect to enrollment dates and specific entrance requirements for each course.
    f. Institution's policy and regulations relative to standards of progress required of the student by the institution. (This policy will define the grading system of the institution; the minimum grades considered satisfactory; conditions for interruption for unsatisfactory grades or progress and description of the probationary period, if any, allowed by the institution; and conditions of reentrance for those students dismissed for

unsatisfactory progress. A statement will be made regarding progress records kept by the institution and furnished the student.)

g. Institution's policy and regulations relating to student conduct and conditions for dismissal for unsatisfactory conduct.

h. Detailed schedule for fees, charges for tuition, books, supplies, tools, student activities, laboratory fees, service charges, rentals, deposits, and all other charges.

i. Policy and regulations of the institution relative to the refund of the unused portion of tuition, fees and other charges in the event the student does not enter the course or withdraws or is discontinued therefrom.

j. A description of the available space, facilities and equipment.

k. A course outline for each course for which approval is requested, showing subjects or units in the course, type of or skill to be learned, and approximate time and clock hours to be spent on each subject or unit.

l. Policy and regulations of the institution relative to granting credit for previous educational training.

(c) After due investigation and consideration on the part of the Board as provided herein, a license shall be issued to the applicant when it is shown to the satisfaction of said Board that said applicant, school, programs of study or courses are found to have met the following criteria:

(1) The courses, curriculum and instruction are consistent in quality, content and length with similar courses in public schools and other private schools in the State, with recognized accepted standards.

(2) There is in the institution adequate space, equipment, instructional material and instructor personnel to provide training of good quality.

(3) Education and experience qualifications of director, administrators and instructors are adequate.

(4) The institution maintains a written record of the previous education and training of the student.

(5) A copy of the course outline, schedule of tuition, fees and other charges, regulations pertaining to absences, grading policy and rules of operation and conduct will be furnished the student upon enrollment.

(6) Upon completion of training, the student is given a certificate or diploma by the institution indicating the approved course and indicating that training was satisfactorily completed.

(7) Adequate records as prescribed by the State Board of Education are kept to show attendance and progress or grades and satisfactory standards relating to attendance, progress and conduct are enforced.

(8) The school complies with all local, city, county, municipal, State and federal regulations, such as fire codes, building and sanitation codes. The State Board of Education may require such evidence of compliance as is deemed necessary.

(9) The school is financially sound and capable of fulfilling its commitments for training.

(10) The school does not exceed its enrollment limitation as established by the State Board of Education.

(11) The school does not utilize advertising of any type which is erroneous or misleading, either by actual statement, omission or intimation.

(12) The school's administrators, directors, owners and instructors are of good reputation and character.

(13) Such additional criteria as may be deemed necessary by the Board.

(d) Any license issued shall be restricted to the programs of instruction or courses specifically indicated in the application for a license. The holder of a license shall present a supplementary application as may be directed by the

Superintendent for approval of additional programs of instruction or courses in which it is desired to offer instruction during the effective period of the license. (1955, c. 1372, art. 30, ss. 3, 4; 1957, c. 1000; 1961, c. 1175, s. 4.)

§ 115-249. Duration and renewal of licenses; notice of change of ownership, administration, etc.; license not transferable. — (a) All licenses issued shall expire on June 30 next following the date of issuance.

(b) Licenses shall be renewable annually on July 1, provided an application for the renewal of the license has been filed in the form and manner prescribed by the Board and the renewal fee has been paid; also, provided the school and its courses, facilities, faculty and all other operations are found to meet the criteria set forth in the requirements for a school to secure an original license.

(c) After a license is issued to any school by the State Board of Education on the basis of its application, it shall be the responsibility of said school to notify immediately said Board of any changes in the ownership, administration, location, faculty, the instructional program or other changes as may affect significantly the course of instruction offered.

(d) In the event of the sale of such school, the license already granted to the original owner or operators thereof shall not be transferable to the new ownership or operators. (1955, c. 1372, art. 30, s. 4; 1957, c. 1000; 1961, c. 1175, s. 5.)

§ 115-250. "Commercial Education Fund"; refund of fees. — The fees and licenses collected under this section shall be placed in a special fund to be designated the "Commercial Education Fund" and shall be used under the supervision and direction of the State Board of Education for the administration of this Article. No license fee shall be refunded in the event the application is rejected or the license suspended or revoked. (1961, c. 1175, s. 6.)

§ 115-251. Suspension, revocation or refusal of license; notice and hearing; judicial review; grounds. — (a) The Board of Education, acting by and through the Superintendent of Public Instruction, shall have the authority to refuse to issue a license and to suspend or revoke a license theretofore issued but before denying any such license, including the renewal thereof, and before suspending or revoking any license theretofore issued, he shall afford the applicant or holder of any such license an opportunity to be heard in connection therewith in person or by counsel and at least 30 days prior to the date set for a hearing on any such matter shall notify in writing the applicant for or the holder of any such license of the date of said hearing and assign therein the grounds for the action contemplated to be taken and as to which inquiry shall be made on the date of such hearing.

(b) The action of the Board of Education acting by and through the Superintendent of Public Instruction in refusing to grant a license or to renew a license, or in suspending or revoking a license, shall be subject to judicial review in all respects according to the provisions and procedure set forth in Chapter 150[A] of the General Statutes of North Carolina.

(c) The Board of Education, acting by and through the Superintendent of Public Instruction, shall have the power to refuse to issue or renew any such license and to suspend or revoke any such license theretofore issued in case it finds:

(1) That the applicant for or holder of such a license has violated any of the provisions of this Article or any of the rules and regulations promulgated thereunder; or

(2) That the applicant for or holder of such a license has knowingly presented to the State Board of Education false or misleading information relating to approval; or

(3) That the applicant for or holder of such a license has failed or refused to permit authorized representatives of the State Board of Education

to inspect the school, or has refused to make available to them at any time upon request full information pertaining to matters within the purview of the Board of Education under the provisions of this Article: or

(4) That the applicant for or holder of such a license has perpetrated or committed fraud or deceit in advertising the school or in presenting to the prospective students written or oral information relating to the school, to employment opportunities, or to opportunities for enrollment in other institutions upon completion of the instruction offered in the school; or

(5) That the applicant or licensee has pleaded guilty, entered a plea of nolo contendere or has been found guilty of a crime involving moral turpitude by a judge or jury in any state or federal court; or

(6) That the applicant or licensee has failed to provide or maintain premises, equipment or conditions which are adequate, safe and sanitary, in accordance with such standards of the State of North Carolina or any of its political subdivisions, as are applicable to such premises and equipment; or

(7) That the licensee is employing teachers, supervisors or administrators who have not been approved by the Board; or

(8) That the licensee has failed to provide and maintain adequate premises, equipment, materials or supplies, or has exceeded the maximum enrollment for which the school or class was licensed; or

(9) That the licensee has failed to provide and maintain adequate standards of instruction or an adequate and qualified administrative, supervisory or teaching staff. (1961, c. 1175, s. 7; 1973, c. 1331, s. 3.)

Editor's Note. — Pursuant to Session Laws 1973, c. 1331, s. 3, effective July 1, 1975, the reference to Chapter 150[A] has been substituted for a reference to Article 33 of Chapter 143 in subsection (b).

§ 115-252. Private schools advisory committee; appointment; duties. — (a) In the administration of this Article, the Superintendent of Public Instruction shall appoint an advisory committee composed of not less than five members who shall serve at his will and pleasure and who are fairly representative of the types of private schools or educational institutions operated, conducted and maintained within this State, whose duties shall be to advise the Superintendent of Public Instruction regarding the criteria to be used in formulating standards and the rules and regulations thereunder to be prescribed for the administration of this Article and the management and operation of the schools subject to the provisions hereof including the development of programs of instruction to be pursued in each type of institution subject to this Article.

(b) The terms of the members shall be set by the Superintendent of Public Instruction. (1961, c. 1175, s. 8.)

§ 115-253. Execution of bond required; filing and recording; actions upon bond. — (a) Before the State Board of Education shall issue such license the person, partnership, association of persons, or corporation shall execute a bond in the sum of one thousand dollars ($1,000), signed by a solvent guaranty company authorized to do business in the State of North Carolina, or by two solvent individual sureties, payable to the State of North Carolina, and approved as to solvency by the clerk of the superior court of the county in which such school or branch school will be located and conduct its business, conditioned that the principal in said bond will carry out and comply with each and every contract, made and entered into by said school or branch school, acting by and through its officers and agents with any student who desires to enter such school or

branch school and to take any courses offered therein and will pay back to such student all amounts collected in tuition and fees in case of failure on the part of the parties obtaining a license from the State Board of Education to open and conduct a business school, trade school or a correspondence school, to comply with its contracts to give the instructions contracted for, and for full period evidenced by such contract. Such bond shall be filed with the clerk of the superior court of the county in which the school or branch school executing the bond is located, and shall be recorded by such clerk in a book provided for that purpose.

(b) The requirement herein specified for giving the aforesaid bond of one thousand dollars ($1,000) shall apply to all business, trade or correspondence schools, or any branches thereof operating in North Carolina, and the State Board of Education shall not issue any license to any person, firm or corporation to operate any of the aforesaid schools until said bond has been given and notice of the approval of same by the clerk of the superior court has been filed with said Board of Education. Operators' bonds of one thousand dollars ($1,000) each shall be required for each branch of such business, trade, correspondence schools, or any branch thereof operated within the State by any person, partnership or corporation.

(c) In any and all cases where the party receiving the license from the State Board of Education fails to comply with any contract made and entered into with any student, or with the parents or guardian of said student, then the State of North Carolina upon the relation of said student, parent or guardian entering into the contract shall have a cause of action against the principal and sureties on the bonds herein provided for the full amount of payments made to such person, with six percent (6%) interest from the date of payment of said amount. For a violation of its contract with a student, or for other good cause, the State Board of Education is authorized to revoke the license issued to the offending school. (1955, c. 1372, art. 30, s. 5; 1957, c. 1000; 1961, c. 1175, s. 9.)

§ 115-254. Operating school without license or bond made misdemeanor. — Any person, or each member of any association of persons, or each officer of any corporation who opens and conducts a business school, a trade school or a correspondence school, or branch school as defined in this Article, without first having obtained the license herein required, and without first having executed the bond required, shall be guilty of a misdemeanor and be punishable by a fine of not less than one hundred dollars ($100.00), nor more than five hundred dollars ($500.00) or 30 days' imprisonment, or both, at the discretion of the court, and each day said school continues to be open and operated shall constitute a separate offense. (1955, c. 1372, art. 30, s. 7; 1957, c. 1000; 1961, c. 1175, s. 10.)

§ 115-254.1. Contracts with unlicensed schools and evidences of indebtedness made null and void. — All contracts entered into by business, trade or correspondence schools, or branch school, as defined in this Article, with students or prospective students, and all promissory notes or other evidence of indebtedness taken in lieu of cash payments by such schools shall be null and void unless such schools are duly licensed as required by this Article. (1957, c. 1000; 1961, c. 1175, s. 11.)

ARTICLE 32.

Nonpublic Schools.

§ 115-255. Responsibility of State Board of Education to supervise nonpublic schools; notice of intention to operate new school. — The State Board of Education, while providing a general and uniform system of education in the public schools of the State, shall always protect the right of every parent to have his children attend a nonpublic school by regulating and supervising all

nonpublic schools serving children of secondary-school age, or younger, to the end that all children shall become citizens who possess certain basic competencies necessary to properly discharge the responsibilities of American citizenship. The Board shall not, in its regulation of such nonpublic schools, interfere with any religious instruction which may be given in any private, denominational, or parochial school, but such nonpublic school shall meet the State minimum standards as prescribed in the course of study, and the children therein shall be taught the branches of education which are taught to the children of corresponding age and grade in the public schools and such instruction, except courses in foreign languages, shall be given in the English language.

New nonpublic schools shall file a notice of intention to operate a new school with the State Superintendent of Public Instruction prior to beginning of operation. (1955, c. 1372, art. 31, s. 1; 1965, c. 584, s. 20.)

§ 115-256. Teachers must have certificates for grades they teach; instruction given must substantially equal that given in public schools. — All nonpublic schools in the State and all teachers employed or who give instruction therein, shall be subject to and governed by the provisions of law for the operation of the public schools insofar as they apply to the qualifications and certification of teachers and the promotion of pupils; and the instruction given in such schools shall be graded in the same way and shall have courses of study for each grade conducted therein substantially the same as those given in the public schools where children would attend in the absence of such nonpublic school.

No person shall be employed to teach in a nonpublic school who has not obtained a teacher's certificate entitling such teacher to teach corresponding courses or classes in public schools. (1955, c. 1372, art. 31, s. 2.)

§ 115-257. Operators must report certain information. — The supervisory officer or teacher of all nonpublic schools shall report to the superintendent of the administrative unit in which such school is located within two weeks of the opening of such school, and within two weeks of the enrollment therein, the names of all pupils attending, their ages, parents' or guardians' names, and places of residence. Likewise, such officer or teacher shall report to such superintendent the withdrawal of any pupil within two weeks of such withdrawal. The supervisory officer or teacher of nonpublic schools shall make such reports as may be required of him by the State Board of Education, or such additional reports as are requested by the superintendent of the administrative unit in which such school is located; and he shall furnish to any court from time to time any information and reports requested by any judge thereof relating to the attendance, conduct and standing of any pupil enrolled in such school if said pupil is at the time awaiting examination or trial by the court or is under the supervision of the court. (1955, c. 1372, art. 31, s. 3.)

ARTICLE 33.

Safety Devices Required.

§ 115-258. Eye protection devices required in certain courses. — The governing board or authority of any public or private school or educational institution within the State, wherein shops or laboratories are conducted providing instructional or experimental programs involving:

(1) Hot solids, liquids or molten metals; or

(2) Milling, sawing, turning, shaping, cutting, or stamping of any solid materials; or

(3) Heat treatment, tempering, or kiln firing of any metal or other materials; or
(4) Gas or electric arc welding; or
(5) Repair or servicing of any vehicle; or
(6) Caustic or explosive chemicals or materials,

shall provide for and require that every student and teacher wear industrial quality eye protective devices at all times while participating in any such program. These industrial quality eye protective devices shall be furnished free of charge to the student and teacher. (1969, c. 1050, s. 1.)

§ 115-259. Visitors to wear eye safety devices. — Visitors to such shops and laboratories shall be furnished with and required to wear such eye safety devices while such programs are in progress. (1969, c. 1050, s. 2.)

§ 115-260. "Industrial-quality eye protective devices" defined. — "Industrial-quality eye protective devices," as used in G.S. 115-258, means devices meeting the standards of the U.S.A. Standard Practice for Occupational and Educational Eye and Face Protection, Z 87.1-1968 approved by the U.S.A. Standards Institute, Inc. (1969, c. 1050, s. 3.)

§ 115-260.1. "Corrective-protective" devices. — In those cases where "corrective-protective" devices that require prescription ophthalmic lenses are necessary, such devices shall only be supplied by those persons licensed by the State to prescribe or supply "corrective-protective" devices. (1969, c. 1050, s. 4.)

ARTICLE 34.

Local Option.

§§ 115-261 to 115-273: Repealed by Session Laws 1971, c. 467.

ARTICLE 35.

Education Expense Grants.

§§ 115-274 to 115-295: Repealed by Session Laws 1969, c. 1279.

ARTICLE 36.

Training of Mentally Retarded Children.

§ 115-296. State Superintendent of Public Instruction to organize and administer program of training; rules; eligibility for training. — There shall be organized and administered under the general supervision of the State Superintendent of Public Instruction a program of training for the trainable mentally retarded children residing within the State. The State Superintendent of Public Instruction shall formulate reasonable rules prescribing the general or specific nature of the program and the procedures for its operation and maintenance. He shall prescribe reasonable rules for determining a child's eligibility for participation in the program on the basis of adequate individual psychological, sociological, and medical evaluations and other related factors. Residence within the school administrative unit shall not be a factor in establishing a child's eligibility to attend such a training center. (1957, c. 1369, s. 1.)

Cross Reference. — As to training of educable mentally handicapped children, see §§ 115-300 to 115-305.

§ 115-297. Local boards may establish programs or centers; joint operation; expenditure of State and local funds; gifts. — County and city boards of education are hereby authorized and empowered to establish training programs or centers for training such trainable mentally retarded children. Boards of education in adjacent administrative units may by written agreement recorded in their minutes jointly operate such a program or center. In addition to such other funds as may be available for this purpose, county or city boards of education establishing such programs or centers are authorized to expend therefor any State or local funds apportioned to them under the provisions of this Article. County and city boards may also receive gifts to be used for such programs or centers and may expend them for such purposes. County and city boards of education are authorized to include in their capital outlay and current expense budgets funds to enable the establishment, maintenance and operation of training programs or centers established pursuant to this Article and the tax-levying authorities are authorized to allow said budgetary items and to levy proper taxes therefor. (1957, c. 1369, s. 2.)

§ 115-298. Allocation of sufficient funds to administer program. — From the appropriations provided for the purpose of this Article, the State Board of Education shall allocate and transfer to the State Department of Public Instruction an amount sufficient to provide personnel to determine eligibility for and generally to administer and supervise the program established under the provisions of this Article. (1957, c. 1369, s. 3.)

§ 115-299. Allocation of state-aid funds to local boards. — The State Board of Education, upon the finding in any school administrative unit of need for the program together with official and public interest and evidence of a financial ability and willingness to aid in maintaining a satisfactory program, shall allocate and transfer to the county or city board of education in whose administrative unit the training center is located such state-aid funds as shall be determined under the provisions of this Article and under the rules of the State Superintendent of Public Instruction to be available for the operation and maintenance of said program or center. State funds shall be allocated uniformly to boards of education on a per capita basis, not less than three hundred sixty dollars ($360.00) per fiscal year, for each eligible child enrolled in the program. (1957, c. 1369, s. 4; 1963, c. 688, s. 4.)

ARTICLE 37.

Training of Educable Mentally Handicapped Children.

§ 115-300. Organization of program; rules and regulations; eligibility for training; information to local school units. — There shall be organized and administered by the Superintendent of Public Instruction and the State Board of Education under the general supervision of the State Superintendent of Public Instruction a program of training for the educable mentally handicapped children residing within the State. Such program shall be a continuing program to begin at the beginning of the school year 1961-62. The State Superintendent of Public Instruction, subject to approval of the State Board of Education, shall formulate reasonable rules prescribing the program and the procedures for its operation and maintenance and shall prescribe reasonable rules for determining a child's eligibility for participation in the program on the basis of adequate individual psychological, sociological, and medical evaluations and other related

factors. In order to assure maximum participation by the local school administrative units, full information on the rules and regulations and other pertinent information shall be forwarded to the local school units in time for them to meet the requirements to qualify for participation in the program. (1961, c. 1146, s. 1.)

Cross Reference. — As to training of mentally retarded children, see §§ 115-296 to 115-299.

§ 115-301. Authority of local boards to establish programs; joint operation; duty of local superintendent. — County and city boards of education are hereby authorized to establish training programs for training the educable mentally retarded children in each administrative unit. Boards of education in more than one administrative unit may by written agreement recorded in their minutes jointly operate such a program. When directed by the board of education in the administrative unit, it shall be the duty of the superintendent of public instruction in that unit to conduct a survey of the children residing in said unit for the purpose of determining those who are educable mentally handicapped children. The superintendent shall then make a full report to the board as to his findings and shall thereafter report to the board, from time to time, any other such educable mentally handicapped children within the administrative unit when they shall come to his attention. (1961, c. 1146, s. 2.)

§ 115-302. Expenditure of State and local funds; gifts. — In addition to such other funds as may be available for their purpose, county or city boards of education establishing such programs are authorized to expend therefor any State or local funds apportioned to them under the provisions of this Article. County and city boards may also receive gifts to be used for such programs and may expend them for such purposes. County and city boards of education are authorized to include in their capital outlay and current expense budgets funds to facilitate the establishment, maintenance, and operation of training programs pursuant to this Article and the tax-levying authorities are authorized to allow said budgetary items and to levy proper taxes therefor. (1961, c. 1146, s. 3.)

§ 115-303. Requests for teachers and other allotments from State Board; reasons for disapproval of requests to be given; transfer of funds. — When the county or city board of education in any administrative unit or units shall approve the establishment of a training program for educable mentally handicapped children in said unit or units, it may thereupon request from the State Board of Education allotment of teachers for the program and such other allotments as may be applicable to the program. When the program for training the educable mentally handicapped children in a unit or a combination of units meets the reasonable rules and regulations prescribed in accordance with G.S. 115-300, the State Board of Education may provide teachers and other applicable allotments for such a program from the appropriation made to the Nine Months School Fund, notwithstanding any limitations express or implied on the amount for teachers and other allotments for this program in the appropriations act. Whenever a request is disapproved either for failure to qualify under the rules and regulations established under the authority of G.S. 115-300 or because of lack of funds, the reason for such disapproval shall be given in writing by the State Superintendent of Public Instruction to the State Board of Education and to the superintendent of the unit or units which make the request and to the Advisory Budget Commission. The Director of the Budget, upon request from the State Board of Education, is authorized to make transfers to the Nine Months School Fund of any State funds which the State Board of Education may find available in any budget administered by the State Board of Education for

the purpose of providing funds required for the program or programs which have been disapproved for lack of funds. (1961, c. 1146, s. 4.)

§ 115-304. Funds available for program. — From the appropriations to the Nine Months School Fund and such other appropriations as may be available, the State Board of Education may allocate and transfer to the State Department of Public Instruction for the biennium 1961-1963 an amount which the Board deems adequate to provide personnel to administer and supervise the program established under the provisions of this Article in addition to the personnel presently in the Department of Public Instruction charged with the administration of education for handicapped persons. (1961, c. 1146, s. 5.)

§ 115-305. Determination of allotments by State Board; salary schedule for teachers. — In making allotments to the administrative units for this program, the State Board of Education is authorized to determine the allotment of teachers and other applicable allotments which are deemed adequate to support the training program in each unit or combination of units and, even though such allotments exceed the allotments which would be required for a program for normal children, may make allocations on that basis. The State Board of Education is authorized, in its discretion, to provide a separate salary schedule for teachers serving this program. (1961, c. 1146, s. 6.)

ARTICLE 38.

Education of Exceptionally Talented Children.

§ 115-306. Educational program established. — There is hereby established a program for the education of exceptionally talented children within the public school system of North Carolina which shall be statewide in operation and opportunity. (1961, c. 1077, s. 1.)

§ 115-307. Definitions. — As used in this Article,

(1) The term "Director" means the Director of the Division for the Education of Exceptionally Talented Children within the public school system.

(2) The term "exceptionally talented child" means a pupil in the public school system of North Carolina who possesses the following qualifications:

a. A group intelligence quotient of 120 or higher,

b. A majority of marks of A and B,

c. Emotional adjustment that is average or better,

d. Achievements at least two grades above the State norm, or in the upper ten percent (10%) of local norms of the administrative unit, and

e. Shall be recommended by the pupil's teacher or principal.

The State Board is authorized to change the foregoing criteria for qualification as an exceptionally talented child, if deemed necessary, provided the qualifications shall be uniform in application.

(3) The term "State Board" means the State Board of Education.

(4) The term "State Superintendent" means the State Superintendent of Public Instruction. (1961, c. 1077, s. 2.)

§ 115-308. Division for Education of Exceptionally Talented Children created. — There is created within the State Department of Public Instruction a division to be known as the Division for the Education of Exceptionally Talented Children. (1961, c. 1077, s. 3.)

§ 115-309. Division administered by Director; appointment and salary of Director; assistance, clerical help and travel allowances. — The Division for the Education of Exceptionally Talented Children within the public school system shall be administered by a Director under the general supervision of the State Superintendent. The Director shall be appointed by the State Superintendent subject to the approval of the State Board. The salary of the Director shall be determined by the State Personnel Council upon recommendation of the State Board and shall be adequate to obtain a person highly trained and qualified by reason of education and experience. The State Board is authorized to provide the Director with such assistance, clerical help, and travel allowances as it may determine to be necessary to carry out the responsibilities of the office of Director under this Article. (1961, c. 1077, s. 4.)

§ 115-310. Supervisor for testing and pupil classification; appointment and duties; specialists for counseling and identification of students. — The Director shall recommend and the State Superintendent appoint, with the approval of the State Board, a supervisor for testing and pupil classification who shall, in cooperation with existing testing and pupil classification services of the Department of Public Instruction, be charged with the responsibility of testing and evaluating all children in the public school system for the purpose of identifying the exceptionally talented children. Said supervisor shall be a person well trained and professionally qualified to carry out this responsibility. In addition, the Director shall recommend and the State Superintendent appoint with the approval of the State Board, such specialists as may be necessary for adequate counseling and identification of such exceptionally talented school children throughout the State; and the State Board shall provide necessary funds for office expense and travel for the conduct of their work. (1961, c. 1077, s. 5.)

§ 115-311. District supervisors; appointment, duties and funds. — In each of the eight educational districts into which the State is divided by the General Assembly pursuant to Article IX, Sec. 4(1) of the Constitution of North Carolina, appropriate programs of education for exceptionally talented children shall be established and developed by a district supervisor of education of the exceptionally talented children in the district. The district supervisors shall be recommended by the Director and appointed by the State Superintendent with the approval of the State Board, and shall be well trained, professional personnel. The district supervisors shall be provided funds for office expense and travel allowances. Their duties shall include assistance of local administrative units in planning programs and developing curricula for the exceptionally talented pupils. (1961, c. 1077, s. 6; 1971, c. 704, s. 14.)

§ 115-312. Powers and duties of Director generally. — The Director, under the direction of the State Board and in accordance with the rules and regulations prescribed by it, is authorized to perform such other powers and duties as the State Board may prescribe for the implementation of the purposes of this Article, including the following:

(1) Research studies which will develop techniques, curricula, and materials especially applicable to exceptionally talented children;
(2) Recommendation of special books, materials, and other supplies to be purchased by the State Board for the proper implementation of this Article, including the local programs provided in G.S. 115-313;
(3) Direction of the district supervisors provided for in G.S. 115-311 in the development of proper curricula and studies to fit the individual needs of exceptionally talented children within the district of the supervisor and of the local administrative units within such districts; and
(4) Establishment of standards for the teachers of the exceptionally talented to be employed or paid in whole or in part pursuant to the

provisions of this Article and to give such examinations or tests as may be necessary to determine such qualifications. (1961, c. 1077, s. 7.)

§ 115-313. Local programs; submission for approval; allotment of funds; teachers; joint programs. — The superintendent of any school administrative unit may submit to the Director a proposal, including any program already in operation, for a local program for the education of the exceptionally talented children in that administrative unit. If such proposal is approved by the Director, in accordance with rules and regulations to be prescribed by the State Board for qualification of local programs under this Article, there shall be allocated by the State Board out of the Nine Months School Fund, to the school administrative unit such funds as may be necessary to carry out the program. Such programs may include additional teachers, special materials and books, plans for identifying and guiding exceptionally talented students, or other items of excess cost not properly borne by the local unit, provided that the amount allocated shall not exceed a maximum amount for each participant pupil to be fixed by the State Board. Teachers for such approved local programs may be allotted out of the teachers provided for the Nine Months School Fund, provided such allotment may be in addition to the regular teacher allotment to the administrative unit involved. Two or more administrative units may join together for the purpose of operating such a program, under the direction of the Division for the Education of Exceptionally Talented Children. (1961, c. 1077, s. 8.)

§ 115-314. Programs in pilot centers. — Demonstrative programs for the education of exceptionally talented children in five pilot centers throughout the State shall be continued under the supervision of the Director for the school year 1961-1962, the excess expense of such pilot centers over and above local expenditure to be borne by the State out of the appropriation provided in this Article. The Director shall recommend rules and regulations, subject to approval of the State Board, for the reimbursement of such excess expense. Subsequent to the school year 1961-1962, the Director shall, with the approval of the State Board, determine whether pilot centers shall continue to be operated, and if so, the number, location, and manner of operation thereof; provided that these pilot centers shall be representative of the various conditions and geographic areas throughout the State. (1961, c. 1077, s. 9.)

Editor's Note. — The appropriation referred to in this section appears in s. 10 of Session Laws 1961, c. 1077, from which this Article derives.

§ 115-315. Programs financed out of local funds not affected. — Nothing in this Article shall prohibit or interfere with the operation in a local school administrative unit of any program for exceptionally talented children not qualifying for the State funds provided in G.S. 115-313, but which is financed out of local funds. (1961, c. 1077, s. 11.)

ARTICLE 38A.

Education for Hearing-Impaired Children in the Public Schools.

§ 115-315.1. Purpose of Article. — It is the purpose of this Article to provide, in the public schools of North Carolina, a comprehensive program for hearing-impaired children of preschool age so that such preschool children may be taught and instructed during the critical learning years, and to provide likewise a comprehensive program in the public schools of this State for school-age children who, while not deaf, have some degree of hearing impairment which calls for and lends itself to special instruction in the public schools implemented by

trained teachers and special equipment. It is further the purpose of this Article to provide a system for the identification and professional evaluation of preschool children who have impaired hearing.

It is deemed advantageous that hard-of-hearing children of school age be, as far as is possible, educated in a normal public school environment in their home community and in the presence of children not handicapped by hearing impairment rather than in the isolation of special programs away from the home community and local environment. At the same time the General Assembly recognizes the continuing and strong need for the State's residential schools for the deaf and affirms continued support in such schools. It is not the purpose of this Article to duplicate in any manner the function of the residential schools for the deaf. (1969, c. 1166, s. 1.)

§ 115-315.2. Definitions. — Unless the context of this Article otherwise requires:

(1) "Deaf" shall mean those children in whom the sense of hearing is nonfunctional for the ordinary purposes of life. The term is inclusive both of congenitally deaf and adventitiously deaf.

(2) "Hard-of-hearing" means those children in whom the sense of hearing, although defective, is functional with or without the hearing aid.

(3) "Hearing-impaired" is inclusive both of the deaf and the hard-of-hearing and includes any child in whom there is some substantial degree of hearing impairment which calls for special instruction or special equipment in the learning processes. (1969, c. 1166, s. 1.)

§ 115-315.3. Organization of program; rules and regulations; eligibility for instructional training; information to local school units. — There shall be organized and administered by the State Superintendent of Public Instruction and the State Board of Education, under the general supervision of the State Superintendent of Public Instruction, a program for the education of hearing-impaired children residing within the State. Such program shall be available to all preschool hearing-impaired children between the ages of one and six and shall be available for all hard-of-hearing children of school age. Such program shall be a continuing program and shall commence during the school year 1969-70. The State Superintendent of Public Instruction, subject to the approval of the State Board of Education, shall formulate reasonable rules prescribing the program and procedures for its operation and maintenance and shall prescribe reasonable rules for determining a child's eligibility for participation on the basis of adequate individual audiology, medical evaluation and other related factors. Provided, however, children who are of school age and who are, upon medical evaluation, found to be deaf, may be instructed in the North Carolina Schools for the Deaf. In order to assure maximum participation by local school administrative units, full information on the rules and regulations and pertinent information shall be forwarded to the local school unit in time for them to meet the requirements in qualifying for participation in the program.

The State Superintendent of Public Instruction in prescribing the procedures for the operation and maintenance of a program under this Article, shall distinguish between the program for preschool children, which program shall be available to all hearing-impaired children of preschool age, and the program for school-age children. (1969, c. 1166, s. 1.)

§ 115-315.4. Authority of local school board to establish programs; joint operations; duty of local superintendent. — County and city boards of education are hereby authorized to establish programs for preschool hearing-impaired children and hard-of-hearing school-age children in each administrative unit. Boards of education in more than one administrative unit may by written agreement recorded in their minutes jointly operate such program. When directed by the board of education in the administrative unit, it shall be the duty

of the superintendent of public instruction in that unit to conduct a survey of the preschool-aged children residing in said unit for the purpose of determining the identity of the hearing-impaired. The superintendent shall then make a full report to the board as to his findings and shall thereafter report to the board, from time to time, any other such hearing-impaired children within the administrative unit when they shall come to his attention. All preschool children included in the program shall first be afforded an otological and audiological examination. (1969, c. 1166, s. 1.)

§ 115-315.5. Expenditure of State and local funds; gifts. — In addition to such other funds as may be available for their purpose, county and city boards of education establishing programs for the preschool-age hearing-impaired and school-age hard-of-hearing under this Article are authorized to expend therefor any State or local funds appropriated to them under the provisions of this Article. County and city boards may also receive gifts to be used for such programs and may expend them for such purposes. Any funds received by way of gift for use of the hearing-impaired program shall be faithfully accounted for the same as if such funds were public funds. County and city boards of education are authorized to include in their capital outlay and current expense budgets, funds to facilitate the establishment, maintenance and operation of programs pursuant to this Article, and the tax-levying authorities of the counties and municipalities involved are authorized to levy proper taxes therefor. (1969, c. 1166, s. 1.)

§ 115-315.6. Request for teachers and other allotments from State Board; disapproval of request; transfer of funds. — When the county or city board of education in any administrative unit or units shall approve the establishment of an instruction program for preschool-age hearing-impaired children and for the school-age hard-of-hearing in said unit or units, it may thereupon request from the State Board of Education an allotment of teachers for the program and such other allotments as may be applicable to the program. When such programs in a unit or a combination of units meets the rules and regulations prescribed in accordance with the State Board of Education, the State Board may provide teachers and other applicable allotments for such a program from the appropriation made to the Nine Months School Fund. Whenever a request is disapproved either by failure to qualify under the rules and regulations established under authority of G.S. 115-315.3 or because of lack of funds, the reason for such disapproval shall be certified by the State Superintendent of Public Instruction to the State Board of Education and to the superintendent of the unit or units making the request. (1969, c. 1166, s. 1.)

ARTICLE 38B.

Education Expense Grants for Exceptional Children.

§ 115-315.7. Statement of legislative policy and purposes. — The General Assembly of North Carolina recognizes that in unusual circumstances the public schools of this State cannot provide the necessary training for all of its exceptional children. It is further recognized that, in order for the exceptional child to obtain a proper education, it may become necessary for the child to attend a private or out-of-state institution. So that all of our young children may be trained to be useful citizens, and to provide our children with this opportunity where it may not exist in the public schools, it shall be the policy of this State to make an educational expense grant available to each eligible child as provided under this Article, for the private or out-of-state education of such child. (1971, c. 946.)

§ 115-315.8. Definitions. — As used in this Article,

(1) The term "exceptional child," shall include the seriously emotionally disturbed, the severely learning disabled, the visually and/or hearing handicapped or impaired, the multiple handicapped, the mentally retarded, the crippled or other health-impaired child.

(2) The term "State Board" means the State Board of Education. (1971, c. 946.)

§ 115-315.9. Who may apply for State grants. — Every exceptional child residing in this State who is eligible to attend a public school may apply for an education expense grant through his parent, guardian or person standing in loco parentis. (1971, c. 946.)

§ 115-315.10. Amount of State grants. —It shall be the policy of the State to make an education expense grant available to each eligible child, as provided under this Article, to cover the cost of tuition in a private or out-of-state educational facility, provided that the amount of said grant shall not exceed two thousand dollars ($2,000) per year per child. (1971, c. 946; 1973, c. 628.)

Editor's Note. — The 1973 amendment substituted "two thousand dollars ($2,000)" for "one thousand two hundred dollars ($1,200)" in the proviso.

§ 115-315.11. Applications to local boards for grants. — Application for an education expense grant shall be made to the board of education of the administrative unit within which the child resides. Such application shall be on standard forms prescribed by the State Board for that purpose and shall be signed under oath or affirmation by the parent or guardian of [or] the person standing in loco parentis to the child for whom application is made. The application shall then be sent to the State Board for approval as provided for in this Article. (1971, c. 946.)

§ 115-315.12. Powers of State Board to administer student education expense grants. — In order to accomplish the purposes of this Article, the State Board is authorized:

(1) To receive from the general fund or other sources such sums as the General Assembly may authorize from time to time for such purposes, and to receive from any other donor, public or private, such sums as may be made available, and to cause such sums to be disbursed for the purposes for which they have been provided;

(2) To establish such criteria as the State Board shall deem necessary or desirable for determining the need of exceptional children for grants under this Article, and for deciding who shall receive grants;

(3) To prescribe the form and regulate the submission of applications for grants and to prescribe the procedures for considering and approving such applications; and

(4) To establish such criteria as the State Board shall deem necessary or desirable for determining which private or out-of-state schools an eligible child must attend in order to obtain an education expense grant. (1971, c. 946.)

§§ 115-315.13 to 115-315.15: Reserved for future codification purposes.

ARTICLE 38C.

Section for the Education of Children with Learning Disabilities.

§ 115-315.16. Creation. — There is hereby established within the public school system a program for the education of children with learning disabilities. There is hereby created within the State Department of Public Instruction a section to be known as the Section for the Education of Children with Learning Disabilities. (1973, c. 580, ss. 1, 3.)

§ 115-315.17. Definitions. — As used in this Article:

(1) The term "learning disability" means children who exhibit a disorder in one or more of the basic psychological or physiological processes involved in understanding and in using spoken or written languages. These may be manifested in disorders of listening, thinking, talking, reading, writing, spelling, or arithmetic. They include, but are not limited to, conditions which have been referred to as perceptual handicaps, brain injury, minimal brain dysfunction, dyslexia, and/or developmental aphasia. They do not include learning problems which are due primarily to visual, hearing, mental retardation, emotional disturbance, or motor handicaps.

(2) The term "Section Director" means the Director of the Section for the Education of Children with Learning Disabilities within the public school system.

(3) The term "State Board" means the State Board of Education.

(4) The term "State Superintendent" means the State Superintendent of Public Instruction. (1973, c. 580, s. 2.)

§ 115-315.18. Appointment of Section Director. — The Section for the Education of Children with Learning Disabilities within the public school system shall be administered by a Section Director under the general supervision of the State Superintendent. The Section Director shall be appointed by the State Superintendent subject to the approval of the State Board. The salary of the Section Director shall be determined by the State Personnel Board upon recommendation of the State Board and shall be adequate to obtain a person highly trained and qualified by reason of education and experience in the area of dealing with children with learning disabilities. The State Board is authorized to provide the Section Director with such assistance, clerical help, and travel allowances as it may determine necessary to carry out the responsibilities of the office of Section Director under this Article. (1973, c. 580, s. 4.)

§ 115-315.19. Appointment of supervisors and specialists. — The Section Director shall recommend and the State Superintendent appoint, with the approval of the State Board, a supervisor for testing and pupil classification who shall, in cooperation with existing testing and pupil-classification services of the Department of Public Instruction, be charged with the responsibility of testing and evaluating all children in the public school system, or who are of compulsory school attendance age, for the purpose of identifying children with learning disabilities. Said supervisor shall be a person well trained in testing and diagnosis of learning disabilities and professionally qualified to carry out this responsibility. In addition, the Section Director shall recommend and the State Superintendent appoint with the approval of the State Board, such specialists as may be necessary for adequate counseling and identification of those children with learning disabilities throughout the State; and the State Board shall provide necessary funds for office expense and travel for the conduct of their work. (1973, c. 580, s. 5.)

§ 115-315.20. Programs established; regional consultants. — In each of the three regional centers staffed by the State Department of Public Instruction,

appropriate programs of education for children with learning disabilities shall be established and developed by a district supervisor of education for children with learning disabilities. These regional consultants shall be recommended by the Section Director and shall be well trained and experienced in the area of learning disabilities. These regional consultants shall be provided funds for office expense and travel allowances. Their duties shall include assistance to local administrative units in planning programs and developing curricula for children with learning disabilities. (1973, c. 580, s. 6.)

§ 115-315.21. Powers and duties of Section Director. — The Section Director, under the direction of the State Board and in accordance with the rules and regulations prescribed by it, is authorized to perform such other powers and duties as the Board may prescribe for the implementation of the purposes of this Article, including the following:

(1) Research studies which will develop techniques, curricula, and materials especially applicable to children with learning disabilities;

(2) Recommendation of special books, materials, and other supplies to be purchased by the State Board for the proper implementation of this Article, including the local programs provided in G.S. 115-315.22;

(3) Direction of the regional education consultants provided for in G.S. 115-315.20 in the development of proper curriculum and studies to fit the individual needs of children with learning disabilities within the district of the supervisor and of the local administrative units within such districts; and

(4) Establishment of standards for the teachers of children with learning disabilities to be employed or paid in whole or in part pursuant to the provisions of this Article and to give such examinations or tests as may be necessary to determine such qualifications. (1973, c. 580, s. 7.)

§ 115-315.22. Proposals for local programs; approval; funding. — The superintendent of any school administrative unit may submit to the Section Director a proposal, including any program already in operation, for a local program for the education of children with learning disabilities in that administrative unit. If such proposal is approved by the Section Director in accordance with rules and regulations to be prescribed by the State Board for qualification of local programs under this Article, there shall be allocated by the State Board out of the Nine Months School Fund to the school administrative unit such funds as may be necessary to carry out the program. Such programs may include additional teachers, special materials and books, plans for identifying and guiding pupils with learning disabilities, or other items of excess cost not properly borne by the local unit, provided that such amount allocated shall not exceed a maximum amount for each participant pupil to be fixed by the State Board. Teachers for such approved local programs may be allotted out of the teachers provided for by the Nine Months School Fund provided such allotments may be in addition to the regular teacher allotment to the administrative unit involved. Two or more administrative units may join together for the purpose of operating such a program, under the direction of the Section for the Education of Children with Learning Disabilities. (1973, c. 580, s. 8.)

ARTICLE 39.

Voluntary Endowment Funds for Public Schools.

§ 115-316. Creation of endowment funds; administration. — Any county or city board of education is hereby authorized and empowered upon the passage of a resolution to create and establish a permanent endowment fund which shall be financed by gifts, donations, bequests or other forms of voluntary

contributions. Any endowment fund established under the provisions of this Article shall be administered by the members of such board of education who, ex officio, shall constitute and be known as "The Board of Trustees of the Endowment Fund of the Public Schools of ..... County or ..... City or Town" (in which shall be inserted the name of the county, city or town). The board of trustees so established shall determine its own organization and methods of procedure. (1961, c. 970.)

§ 115-317. Boards of trustees public corporations; powers and authority generally; investments. — Any board of trustees created and organized under this Article shall be a body politic, public corporation and instrumentality of government and as such may sue and be sued in matters relating to the endowment fund and shall have the power and authority to acquire, hold, purchase and invest in all forms of property, both real and personal, including, but not by way of limitation, all types of stocks, bonds, securities, mortgages and all types, kinds and subjects of investments of any nature and description. The board of trustees of said endowment fund may receive pledges, gifts, donations, devises and bequests, and may in its discretion retain such in the form in which they are made, and may use the same as a permanent endowment fund. The board of trustees of any endowment fund created hereunder shall have the power to sell any property, real, personal or choses in action, of the endowment fund, at either public or private sale. The board of trustees shall be responsible for the prudent investment of any funds or moneys belonging to the endowment fund in the exercise of its sound discretion without regard to any statute or rule of law relating to the investment of funds by fiduciaries. (1961, c. 970.)

§ 115-318. Expenditure of funds; pledges. — It is not the intent that such endowment fund created hereunder shall take the place of State appropriations or any regular appropriations, tax funds or other funds made available by counties, cities, towns or school administrative units for the normal operation of the public schools. Any endowment fund created hereunder, or the income from same, shall be used for the benefit of the public schools of the county, city or town involved and to supplement regular and normal appropriations to the end that the public schools may improve and increase their functions, may enlarge their areas of service and may become more useful to a greater number of people. The board of trustees in its discretion shall determine the objects and purposes for which the endowment fund shall be spent. Nothing herein shall be construed to prevent the board of trustees of any such endowment fund established hereunder from receiving pledges, gifts, donations, devises and bequests and from using the same for such lawful school purposes as the donor or donors designate, provided, always, that the administration of any such pledges, gifts, donations, devises and bequests, or the expenditure of funds from same, will not impose any financial burden or obligation on the State of North Carolina or any subdivisions of government of the State. The board of trustees may, with the consent of the donor of any pledges, transfer and assign such pledges as security for loans. This consent by the donor may be made at the time of the pledge or at any time before said pledges are paid off in full. It is the purpose of this provision to enable the board of trustees to have the immediate use of funds which the donor may desire to pledge as payable over a period of years. (1961, c. 970.)

§ 115-319. When only income from fund expended. — Where the donor or donors of said pledges, gifts, donations, devises and bequests so provides, the board of trustees shall keep the principal of such gift or gifts intact and only the income therefrom may be expended. (1961, c. 970.)

§ 115-320. Property and income of board of trustees exempt from State taxation. — All property received, purchased, contributed or donated to the board of trustees for the benefit of any endowment fund created hereunder and all donations, gifts and bequests received or otherwise administered for the benefit of said endowment fund, as well as the principal and income from said endowment fund, shall at all times be free from taxation, of any nature whatsoever, within the State. (1961, c. 970.)

SUBCHAPTER XI. SPECIAL EDUCATIONAL INSTITUTIONS.

ARTICLE 40.

Governor Morehead School.

§ 115-321. Incorporation, name and management. — The institution for the education of the blind, located in the City of Raleigh, shall be a corporation under the name and style of the Governor Morehead School, and shall be under the management of a [the] Department of Human Resources and superintendent. (1881, c. 211, s. 1; Code, s. 2227; Rev., s. 4187; 1917, c. 35, s. 1; C. S., s. 5872; 1957, c. 1434; 1963, c. 448, s. 28; 1969, c. 749, s. 2; 1973, c. 476, s. 164.)

Editor's Note. — The 1973 amendment substituted "Department of Human Resources" for "board of directors."

State Government Reorganization. — The Governor Morehead School was transferred to the Department of Human Resources by former § 143A-148, enacted by Session Laws 1971, c. 864.

§§ 115-322 to 115-324: Repealed by Session Laws 1973, c. 476, s. 164.

Cross Reference. — As to the organization of the Board of Directors of the Governor Morehead School, see §§ 143B-173 through 143B-176.

§ 115-325. Admission of pupils; how admission obtained. — The Department of Human Resources shall, on application, receive in the institution for the purpose of education all blind children who are residents of this State, not of confirmed immoral character, nor unsound in mind, nor incapacitated by physical infirmity for useful instruction, who are between the ages of six and 18 years. Provided, that pupils who are not within the age limits above set forth may be admitted to said institution in cases in which the Department of Human Resources finds that the admission of such pupils will be beneficial to them and in cases in which there is sufficent space available for their admission in said institution. Provided, further, that the Department of Human Resources is authorized to make expenditures, out of any scholarship funds or other funds already available or appropriated, of sums of money for the use of out-of-state facilities for any student who, because of peculiar conditions or disability, cannot be properly educated at the school in Raleigh. Until schools for the deaf at Wilson and Morganton are complete and ready to receive deaf students, such deaf students who normally would attend the Governor Morehead School shall be received and educated therein. (1881, c. 211, s. 5; Code, s. 2231; Rev., s. 4191; 1917, c. 35, s. 1; C. S., s. 5876; 1947, c. 375; 1949, c. 507; 1953, c. 675, s. 14; 1963, c. 448, s. 28; 1969, c. 749, s. 2; c. 1279; 1973, c. 476, s. 164.)

Editor's Note. — The 1973 amendment substituted "Department of Human Resources" for "board of directors."

Quoted in Swann v. Charlotte-Mecklenburg Bd. of Educ., 318 F. Supp. 786 (W.D.N.C. 1970).

§ 115-326. Admission of curable blind. — It shall be the duty of the Department of Human Resources to admit into such institution from time to time, provided space is available, such of the blind of the State as they may deem to be curable. (1895, c. 461; Rev., s. 4192; C. S., s. 5877; 1963, c. 448, s. 28; 1969, c. 749, s. 2; 1973, c. 476, s. 164.)

Editor's Note. — The 1973 amendment substituted "Department of Human Resources" for "directors of the Governor Morehead School."

§ 115-327. Admission of pupils from other states. — The Department of Human Resources may, on such terms as it deems proper and upon the receipt of tuition and necessary expenses as prescribed by the Department of Human Resources, admit as pupils persons of like infirmity from any other state but such power shall not be exercised to the exclusion of any child of this State, and the person so admitted shall not acquire the condition of a resident of the State by virtue of such pupilage. (1881, c. 211, s. 6; Code, s. 2232; Rev., s. 4193; C. S., s. 5878; 1963, c. 448, s. 28; 1969, c. 749, s. 2; 1973, c. 476, s. 164.)

Editor's Note. — The 1973 amendment substituted "Department of Human Resources" for "board."

§ 115-328. Department of Human Resources may confer diplomas. — The Department of Human Resources may, upon the recommendation of the superintendent and faculty, confer such diplomas or marks of achievement upon its graduates as it may deem appropriate to encourage merit. (1881, c. 211, s. 7; Code, s. 2233; Rev., s. 4194; 1917, c. 35, s. 1; C. S., s. 5879; 1963, c. 448, s. 28; 1969, c. 749, s. 2; 1973, c. 476, s. 164.)

Editor's Note. — The 1973 amendment substituted "Department of Human Resources" for "board."

§ 115-329: Repealed by Session Laws 1973, c. 476, s. 164.

§ 115-330. State Treasurer is ex officio treasurer of institution. — The State Treasurer shall be ex officio treasurer of the institution. He shall report to the Department of Human Resources at such times as they may call on him, showing the amount received on account of the institution, amount paid out, and amount on hand. (1881, c. 211, s. 9; Code, s. 2235; Rev., s. 4196; C. S., s. 5881; 1963, c. 448, s. 28; 1969, c. 749, s. 2; 1973, c. 476, s. 164.)

Editor's Note. — The 1973 amendment substituted "Department of Human Resources" for "board."

§§ 115-331 to 115-333: Repealed by Session Laws 1973, c. 476, s. 164.

§ 115-334. When clothing, etc., for pupils paid for by county. — Where it shall appear to the satisfaction of the director of social services and the chairman

of the board of county commissioners of any county in this State that the parents of any blind child residing in such county are then unable to provide such child with clothing and/or traveling expenses to and from the Governor Morehead School, or where such child has no living parent, or any estate of its own, or any person, or persons, upon which it is legally dependent who are able to provide expenses for such transportation and clothing, then upon the demand of the institution which such child attends or has been accepted for attendance, said demand being made through the State Auditor, the board of county commissioners of the county in which such child resides shall issue or cause to be issued its warrant payable to the State Auditor, same to be credited to the proper institution, for the payment of an amount sufficient to clothe and pay traveling expenses of said child. (1879, c. 332, s. 1; Code, s. 2238; Rev., s. 4199; Ex. Sess. 1908, c. 69; 1917, c. 35, s. 3; 1919, c. 183; C. S., s. 5885; 1927, c. 86; 1929, c. 181; 1961, c. 186; 1963, c. 448, s. 28; 1969, c. 749, s. 2; c. 982.)

§ 115-335: Repealed by Session Laws 1969, c. 749, s. 2.

ARTICLE 41.

Central North Carolina School for the Deaf.

§ 115-336. Incorporation and location. — There is hereby established, and there shall be maintained, a school for the deaf of this State which shall be a corporation under the corporate name of the Central North Carolina School for the Deaf. The Department of Human Resources shall be the governing body of the Central North Carolina School for the Deaf. The location of all physical plants, as well as the location of the Central North Carolina School for the Deaf, shall be established and selected by the Department of Human Resources subject to the approval of the Governor of North Carolina. (1891, c. 399, s. 1; Rev., s. 4202; 1915, c. 14; C. S., s. 5888; 1957, c. 1433; 1963, c. 448, s. 28; 1969, c. 1279; 1971, c. 1000; 1973, c. 476, s. 165.)

Editor's Note. — The 1973 amendment substituted "Department of Human Resources" for "Board of Directors of the North Carolina schools for the deaf" and "Board of Directors."

State Government Reorganization. — The schools for the deaf were transferred to the Department of Human Resources by former § 143A-149, enacted by Session Laws 1971, c. 864.

Quoted in Swann v. Charlotte-Mecklenburg Bd. of Educ., 318 F. Supp. 786 (W.D.N.C. 1970).

§§ 115-337 to 115-339: Repealed by Session Laws 1973, c. 476, s. 165.

Cross Reference. — As to the organization of the Board of Directors of the North Carolina Schools for the Deaf, see §§ 143B-173 through 143B-176.

§ 115-340. Pupils admitted; education. — The Department of Human Resources shall according to such reasonable regulations as the Board of Directors may prescribe, on application, receive into the school for the purposes of education all deaf children resident of the State not of confirmed immoral character, not imbecile or unsound of mind or incapacitated by physical infirmity for useful instruction, who are between the ages of six and 21 years; provided, that the Department of Human Resources may admit students under the age of six years when in its judgment, such admission will be in the best interests of the applicant and the facilities of the school permit such admission. Only those who are bona fide citizens and/or residents of North Carolina shall be eligible to and entitled to receive free tuition and maintenance. The Department may fix charges and the Board of Directors may prescribe rules whereby nonresident

deaf children may be admitted, but in no event shall the admission of nonresidents in any way prevent the attendance of any eligible deaf child, resident of North Carolina. The Department shall provide for the instruction of all pupils in the branches of study now prescribed by law for the public schools of the State and in such other branches as may be of special benefit to the deaf.

The Department shall encourage the State to provide the classrooms with modern auditory training equipment, audiovisual media equipment, and any other special equipment to provide the best educational conditions for the deaf. The Department shall provide a teacher-training program in the State. The Department shall provide for a comprehensive vocational and technical training program for boys and girls as may be useful to them in making themselves self-supporting. (1961, c. 968; 1963, c. 448, s. 28; 1969, c. 1279; 1971, c. 1000; 1973, c. 476, s. 165.)

Editor's Note. — The 1973 amendment rewrote the first and third sentences of the first paragraph and substituted "Department" for "Board" in the last sentence of the first paragraph and for "Board of Directors" in three places in the second paragraph.

§ 115-341. Free textbooks and State purchase and rental system. — The Central North Carolina School for the Deaf shall have the right and privilege of participating in the distribution of free textbooks and in the purchase and rental system operated by the State of North Carolina in the same manner as any other public school in the State. (1943, c. 205; 1963, c. 448, s. 28; 1971, c. 1000.)

Quoted in Swann v. Charlotte-Mecklenburg Bd. of Educ., 318 F. Supp. 786 (W.D.N.C. 1970).

§ 115-342. Agreements with local governing authorities. — The Department is authorized to make such agreements with the governing authority of any municipality, or of any county, as may be mutually agreed upon, to promote convenience and economy for joint water supply, lighted areas, use of sewage facilities, or any other utilities or facilities that may be necessary and as may be agreed upon. (1891, c. 399, ss. 8-10; Rev., s. 4205; C. S., s. 5893; 1963, c. 448, s. 28; 1971, c. 1000; 1973, c. 476, s. 165.)

Editor's Note. — The 1973 amendment rewrote this section.

§ 115-343: Repealed by Session Laws 1971, c. 1000.

ARTICLE 42.

Central Orphanage of North Carolina.

§ 115-344. Creation; powers. — The corporation created by Chapter 47, Private Laws of 1887, is hereby continued as a body corporate for a period of 60 years from March 8, 1927, under the name and style of "The Central Orphanage of North Carolina." The said corporation shall have power to receive, purchase, and hold property, real and personal, not to exceed in value one million dollars ($1,000,000), to sue and be sued, to plead and be impleaded, to receive gifts, donations and appropriations, to contract and be contracted with, and to do all other acts usual and necessary in the conduct of such corporation, and to carry out the intent and purposes thereof under and as subscribed by the laws of North Carolina. (1927, c. 162, s. 1; 1963, c. 448, s. 28; 1965, c. 617, s. 2.)

Cited in Swann v. Charlotte-Mecklenburg Bd. of Educ., 318 F. Supp. 786 (W.D.N.C. 1970).

§ 115-345. Directors; selection, self-perpetuation, management of corporation. — M. F. Thornton, Reverend M. C. Ransom, J. W. Levy, J. C. Jeffreys, J. E. Shepard, N. A. Cheek, Alex Peace and Reverend G. C. Shaw are hereby named and appointed as members of the board of directors of said "The Central Orphanage of North Carolina." The Governor of North Carolina shall appoint five citizens of Granville County as members of said board of directors, and the 13 so named shall constitute the board of directors of said corporation. Said board of directors shall organize by the election of a president and secretary, shall make all necessary bylaws and regulations for the convenient and efficient management and control of the affairs of said corporation, including the method by which successors to the directors herein named shall be chosen. (1927, c. 162, s. 2; 1963, c. 448, s. 28; 1965, c. 617, s. 2; 1969, c. 1279.)

Quoted in Swann v. Charlotte-Mecklenburg Bd. of Educ., 318 F. Supp. 786 (W.D.N.C. 1970).

§ 115-346. Board of trustees; appropriations; treasurer; board of audit. — The five members of said board of directors so appointed by the Governor shall also serve as a board of trustees of said "The Central Orphanage of North Carolina." The said board of trustees so appointed shall serve for a term of four years and until their successors are chosen. All appropriations made by the General Assembly to the said "The Central Orphanage of North Carolina" shall be under the control of the board of trustees, and said appropriations shall be expended under their supervision and direction. The board of trustees shall select one of their members as a treasurer of the fund appropriated to the institution by the General Assembly and also not more than two persons to act as a board to audit the expenditure of such appropriation. The treasurer shall receive a salary of one hundred dollars ($100.00) per year for his services and members of the board of audit a salary not to exceed one hundred and fifty dollars ($150.00) per year. The treasurer shall give a bond payable to the State of North Carolina in a surety company in such sum as the board of trustees may require, the annual premium to be paid out of the funds of the said Orphanage. (1927, c. 162, s. 3; 1963, c. 448, s. 28; 1965, c. 617, s. 2.)

Quoted in Swann v. Charlotte-Mecklenburg Bd. of Educ., 318 F. Supp. 786 (W.D.N.C. 1970).

§ 115-347. Training of orphans. — The said corporation shall receive, train and care for such orphan children of the State of North Carolina as under the rules and regulations of said corporation may be deemed practical and expedient, and impart to them such mental, moral and industrial education as may fit them for usefulness in life. (1927, c. 162, s. 4; 1963, c. 448, s. 28; 1969, c. 1279.)

Quoted in Swann v. Charlotte-Mecklenburg Bd. of Educ., 318 F. Supp. 786 (W.D.N.C. 1970).

§ 115-348. Control over orphans. — The said corporation shall have power to secure the control of such orphans by the written consent of those nearest akin to them or of those having control of such orphans, and shall receive such others as may be committed to its care under the appropriate laws of the State; and it shall be unlawful for any person or persons to interfere in any way with said corporation in the management of such orphans after they shall have been

entered and received by it. The board of directors shall make all necessary rules and regulations for the reception and discharge of children from said Orphanage. (1927, c. 162, s. 5; 1963, c. 448, s. 28.)

Cited in Swann v. Charlotte-Mecklenburg Bd. of Educ., 318 F. Supp. 786 (W.D.N.C. 1970).

SUBCHAPTER XIA. COMPACT.

ARTICLE 43.

Interstate Compact for Education.

§ 115-349. Enactment of Compact. — The Compact for Education is hereby entered into and enacted into law, with all jurisdictions legally joining therein, in the form substantially as follows:

COMPACT FOR EDUCATION

Article I. Policy and Purpose.

It is the purpose of this Compact to:

(1) Establish and maintain close cooperation and understanding among executive, legislative, professional, educational and lay leadership on a nationwide basis at the state and local levels.

(2) Provide a forum for the discussion, development, crystallization and recommendation of public policy alternatives in the field of education.

(3) Provide a clearinghouse of information on matters relating to educational problems and how they are being met in different places throughout the nation, so that the executive and legislative branches of state government and of local communities may have ready access to the experience and record of the entire country, and so that both lay and professional groups in the field of education may have additional avenues for the sharing of experience and the interchange of ideas in the formation of public policy in education.

(4) Facilitate the improvement of state and local educational systems so that all of them will be able to meet adequate and desirable goals in a society which requires continuous qualitative and quantitative advances in educational opportunities, methods and facilities.

(5) It is the policy of this Compact to encourage and promote local and state initiative in the development, maintenance, improvement and administration of educational systems and institutions in a manner which will accord with the needs and advantages of diversity among localities and states.

(6) The party states recognize that each of them has an interest in the quality and quantity of education furnished in each of the other states, as well as in the excellence of its own educational systems and institutions, because of the highly mobile character of individuals within the nation, and because of the products and services contributing to the health, welfare and economic advancement of each state [which] are supplied in significant part by persons educated in other states.

Article II. State Defined.

As used in this Compact, "state" means a state, territory or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

Article III. The Commission.

(1) The education commission of the states, hereinafter called "the commission," is hereby established. The commission shall consist of seven members representing each party state. One of such members shall be the governor; two shall be members of the state legislature selected by its respective houses and serving in such manner as the legislature may determine; and four shall be appointed by and serve at the pleasure of the governor, unless the laws of the state otherwise provide. If the laws of a state prevent legislators from serving on the commission, six members shall be appointed and serve at the pleasure of the governor, unless the laws of the state otherwise provide. In addition to any other principles or requirements which a state may establish for the appointment and service of its members of the commission, the guiding principle for the composition of the membership on the commission from each party state shall be that the members representing such state shall, by virtue of their training, experience, knowledge or affiliations be in a position collectively to reflect broadly the interests of the state government, higher education, the state education system, local education, lay and professional, public and nonpublic educational leadership. Of those appointees, one shall be the head of a state agency or institution, designated by the governor, having responsibility for one or more programs of public education. In addition to the members of the commission representing the party states, there may be not to exceed ten nonvoting commissioners selected by the steering committee for terms of one year. Such commissioners shall represent leading national organizations of professional educators or persons concerned with educational administration.

(2) The members of the commission shall be entitled to one vote each on the commission. No action of the commission shall be binding unless taken at a meeting at which a majority of the total number of votes on the commission are cast in favor thereof. Action of the commission shall be only at a meeting at which a majority of the commissioners are present. The commission shall meet at least once a year. In its bylaws, and subject to such directions and limitations as may be contained therein, the commission may delegate the exercise of any of its powers to the steering committee or the executive director, except for the power to approve budgets or requests for appropriations, the power to make policy recommendations pursuant to Article IV and adoption of the annual report pursuant to Article III (10).

(3) The commission shall have a seal.

(4) The commission shall elect annually, from among its members, a chairman, who shall be a governor, a vice-chairman and a treasurer. The commission shall provide for the appointment of an executive director. Such executive director shall serve at the pleasure of the commission, and together with the treasurer and such other personnel as the commission may deem appropriate shall be bonded in such amount as the commission shall determine. The executive director shall be secretary.

(5) Irrespective of the civil service, personnel or other merit system laws of any of the party states, the executive director subject to the approval of the steering committee shall appoint, remove or discharge such personnel as may be necessary for the performance of the functions of the commission, and shall fix the duties and compensation of such personnel. The commission in its bylaws shall provide for the personnel policies and programs of the commission.

(6) The commission may borrow, accept or contract for the services of personnel from any party jurisdiction, the United States, or any subdivision or agency of the aforementioned governments, or from any agency of two or more of the party jurisdictions or their subdivisions.

(7) The commission may accept for any of its purposes and functions under this compact any and all donations, and grants of money, equipment, supplies, materials and services, conditional or otherwise, from any state, the United States, or any other governmental agency, or from any person, firm, association, foundation, or corporation, and may receive, utilize and dispose of the same. Any donation or grant accepted by the commission pursuant to this paragraph or services borrowed pursuant to paragraph (6) of this article shall be reported in the annual report of the commission. Such report shall include the nature, amount and conditions, if any, of the donation, grant, or services borrowed, and the identity of the donor or lender.

(8) The commission may establish and maintain such facilities as may be necessary for the transaction of its business. The commission may acquire, hold, and convey real and personal property and any interest therein.

(9) The commission shall adopt bylaws for the conduct of its business and shall have the power to amend and rescind these bylaws. The commission shall publish its bylaws in convenient form and shall file a copy thereof and a copy of any amendment thereto, with the appropriate agency or officer in each of the party states.

(10) The commission annually shall make to the governor and legislature of each party state a report covering the activities of the commission for the preceding year. The commission may make such additional reports as it may deem desirable.

Article IV. Powers.

In addition to authority conferred on the commission by other provisions of the Compact, the commission shall have authority to:

(1) Collect, correlate, analyze and interpret information and data concerning educational needs and resources.

(2) Encourage and foster research in all aspects of education, but with special reference to the desirable scope of instruction, organization, administration, and instructional methods and standards employed or suitable for employment in public educational systems.

(3) Develop proposals for adequate financing of education as a whole and at each of its many levels.

(4) Conduct or participate in research of the types referred to in this article in any instance where the commission finds that such research is necessary for the advancement of the purposes and policies of this Compact, utilizing fully the resources of national associations, regional compact organizations for higher education, and other agencies and institutions, both public and private.

(5) Formulate suggested policies and plans for the improvement of public education as a whole, or for any segment thereof, and make recommendations with respect thereto available to the appropriate governmental units, agencies and public officials.

(6) Do such other things as may be necessary or incidental to the administration of any of its authority or functions pursuant to this Compact.

Article V. Cooperation with Federal Government.

(1) If the laws of the United States specifically so provide, or if administrative provision is made therefor within the federal government, the United States may be represented on the commission by not to exceed 10 representatives. Any such representative or representatives of the United States shall be appointed and serve in such manner as may be provided by or pursuant to federal law, and may be drawn from any one or more branches of the federal government, but no such representatives shall have a vote on the commission.

(2) The commission may provide information and make recommendations to any executive or legislative agency or officer of the federal government concerning the common educational policies of the states, and may advise with any such agencies or officers concerning any matter of mutual interest.

Article VI. Committees.

(1) To assist in the expeditious conduct of its business when the full commission is not meeting, the commission shall elect a steering committee of 32 members which, subject to the provisions of this Compact and consistent with the policies of the commission, shall be constituted and function as provided in the bylaws of the commission. One fourth of the voting membership of the steering committee shall consist of governors, one fourth shall consist of legislators, and the remainder shall consist of other members of the commission. A federal representative on the commission may serve with the steering committee, but without vote. The voting members of the steering committee shall serve for terms of two years, except that members elected to the first steering committee of the commission shall be elected as follows: 16 for one year and 16 for two years. The chairman, vice-chairman, and treasurer of the commission shall be members of the steering committee and, anything in this paragraph to the contrary notwithstanding, shall serve during their continuance in these offices. Vacancies in the steering committee shall not affect its authority to act, but the commission at its next regularly ensuing meeting following the occurrence of any vacancy shall fill it for the unexpired term. No person shall serve more than two terms as a member of the steering committee; provided that service for a partial term of one year or less shall not be counted toward the two-term limitation.

(2) The commission may establish advisory and technical committees composed of state, local, and federal officials, and private persons to advise it with respect to any one or more of its functions. Any advisory or technical committee may, on request of the states concerned, be established to consider any matter of special concern to two or more of the party states.

(3) The commission may establish such additional committees as its bylaws may provide.

Article VII. Finance.

(1) The commission shall advise the governor or designated officer or officers of each party state of its budget and estimated expenditures for such period as may be required by the laws of that party state. Each of the commission's budgets of estimated expenditures shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states.

(2) The total amount of appropriation requests under any budget shall be apportioned among the party states. In making such apportionment, the commission shall devise and employ a formula which takes equitable account of the populations and per capita income levels of the party states.

(3) The commission shall not pledge the credit of any party states. The commission may meet any of its obligations in whole or in part with funds available to it pursuant to Article III (7) of this Compact, provided that the commission takes specific action setting aside such funds prior to incurring an obligation to be met in whole or in part in such manner. Except where the commission makes use of funds available to it pursuant to Article III (7) thereof, the commission shall not incur any obligation prior to the allotment of funds by the party states adequate to meet the same.

(4) The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established by its bylaws. However, all receipts and disbursements of funds handled by the commission shall be audited yearly by a qualified public accountant, and the report of the audit shall be included in and become part of the annual reports of the commission.

(5) The accounts of the commission shall be open at any reasonable time for inspection by duly constituted officers of the party states and by any persons authorized by the commission.

(6) Nothing contained herein shall be construed to prevent commission compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the commission.

Article VIII. Eligible Parties; Entry into and Withdrawal.

(1) This Compact shall have as eligible parties all states, territories, and possessions of the United States, the District of Columbia, and the Commonwealth of Puerto Rico. In respect of any such jurisdiction not having a governor, the term "governor," as used in this Compact, shall mean the closest equivalent official of such jurisdiction.

(2) Any state or other eligible jurisdiction may enter into this Compact and it shall become binding thereon when it has adopted the same: Provided that in order to enter into initial effect, adoption by at least 10 eligible party jurisdictions shall be required.

(3) Adoption of the Compact may be either by enactment thereof or by adherence thereto by the governor; provided that in the absence of enactment, adherence by the governor shall be sufficient to make his state a party only until December 31, 1967. During any period when a state is participating in this Compact through gubernatorial action, the governor shall appoint those persons who, in addition to himself, shall serve as the members of the commission from his state, and shall provide to the commission an equitable share of the financial support of the commission from any source available to him.

(4) Except for a withdrawal effective on December 31, 1967, in accordance with paragraph (3) of this article, any party state may withdraw from this Compact by enacting a statute repealing the same, but no such withdrawal shall take effect until one year after the governor of the withdrawing state has given notice in writing of the withdrawal to the governors of all other party states. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

Article IX. Construction and Severability.

This Compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this Compact shall be severable and if any phrase, clause, sentence or provision of this Compact is declared to be contrary to the constitution of any state or of the United States, or the application thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this Compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this Compact shall be held contrary to the constitution of any state participating therein, the Compact shall remain in full force and effect as to the state affected as to all severable matters. (1967, c. 1020.)

§ 115-350. Establishment of North Carolina Education Council. — There is hereby established the North Carolina Education Council composed of the members of the education commission of the states representing this State, and not exceeding five other persons appointed by the Governor for terms of three years. Such other persons shall be selected so as to be broadly representative of professional and lay interests within this State having the responsibilities for, knowledge with respect to, and interest in educational matters. The Governor shall serve as chairman of the North Carolina Education Council or any person that the Governor may designate shall serve as chairman. The chairman of the State Board of Education, the State Superintendent of Public Instruction, the chairman of the Board of Governors of the University of North Carolina, and the President of the University of North Carolina shall be ex officio members of the North Carolina Education Council. The Council shall meet on the call of its chairman or at the request of a majority of its members, but in any event the Council shall meet not less than three times in each year. The Council may consider any and all matters relating to the recommendations of the education commission of the states and the activities of the members in representing this State thereon. (1967, c. 1020; 1971, c. 1244, s. 14.)

State Government Reorganization. — The administration of this compact was transferred to the Department of Public Education by § 143A-45, enacted by Session Laws 1971, c. 864.

§ 115-351. Filing copy of bylaws with Secretary of State. — Pursuant to Article III (9) of the Compact, the commission shall file a copy of its bylaws and any amendment thereto with the Secretary of State of North Carolina. (1967, c. 1020.)

SUBCHAPTER XII. EXPERIMENTATION AND RESEARCH.

ARTICLE 44.

North Carolina Advancement School.

§ 115-352. Continuation of North Carolina Advancement School by the State Board of Education. — The State Board of Education shall have the responsibility of operating the North Carolina Advancement School at Winston Salem as a continuing phase of and in conjunction with the public school system of North Carolina. (1967, c. 1028, s. 2.)

State Government Reorganization. — The North Carolina Advancement School was transferred to the Department of Public Education by § 143A-46, enacted by Session Laws 1971, c. 864.

§ 115-353. Purpose of the North Carolina Advancement School. — The purpose of the North Carolina Advancement School is to provide a facility wherein there shall be carried on experimentation and research into the causes of and remedies for underachievement in the public schools of North Carolina. (1967, c. 1028, s. 2.)

§ 115-354. Board of governors. — The State Board of Education shall appoint and maintain for the school a governing board to be known as "the board of governors," which shall be composed of 10 citizens of the State, one of whom shall always be the superintendent of the Forsyth County-Winston Salem schools. Except for the superintendent of the Forsyth County-Winston Salem schools, the board members shall serve for terms of not more than three consecutive years. The board of governors shall select from its membership annually a chairman and vice-chairman, and such board shall meet at least four times each year upon the call of its chairman. Members of the board shall receive the same per diem and shall be reimbursed for their expenses in the same manner as other boards and commissions generally. The director of the School shall serve as secretary to the board. (1967, c. 1028, s. 2.)

§ 115-355. Responsibilities of the board of governors. — Subject to the general supervision of the State Board of Education, the board of governors shall have the responsibility for

(1) Determining the policies which shall govern the administration and supervision of the school,
(2) Observing and reviewing all phases of the school's operation, and
(3) Reporting its findings and recommendations through the Superintendent of Public Instruction to the State Board of Education. (1967, c. 1028, s. 2.)

§ 115-356. State Board of Education to appoint director. — The State Board of Education shall appoint a director of the school who shall serve for such term, which may be indefinite, as the State Board shall determine. (1967, c. 1028, s. 2.)

§ 115-357. Responsibilities of the director. — In accordance with the policies of the board of governors, the director shall have responsibility for

(1) Administering and directing all the affairs of the school,
(2) Recommending to the board of governors the number and types of positions required to staff the school,
(3) Selecting and recommending to the board of governors all personnel, including consultants to be employed or assigned to the school,
(4) The development and implementation of the curriculum of the school,
(5) Developing procedures which will insure the continuous evaluation of all aspects of the school and its progress,
(6) Recommending for approval of the board of governors any rental or lease agreements affecting the facility wherein the school is located,
(7) Preparing and submitting to the State Board of Education through the board of governors the recommended budget for the operation of the school,
(8) Developing procedures and techniques which will promote the articulation and coordination of the program of the school with that of the public schools throughout the State, and
(9) Reporting periodically and systematically to the board of governors and the State Board of Education on the status of the school, and performing such other duties as the board of governors from time to time may find appropriate to his administrative position. (1967, c. 1028, s. 2.)

Chapter 115A.

Community Colleges, Technical Institutes, and Industrial Education Centers.

Article 1.

General Provisions for State Administration.

Sec.
115A-1. Statement of purpose.
115A-2. Definitions.
115A-3. State Board of Education to establish department to administer system of educational institutions.
115A-4. Establishment and transfer of institutions.
115A-5. Administration of institutions by State Board of Education; extension courses; personnel exempt from State Personnel Act; contracting, etc., for establishment and operation of extension units of community college system; use of existing public school facilities.
115A-6. Withdrawal of State support.

Article 2.

Local Administration.

115A-7. Each institution to have board of trustees; selection of trustees.
115A-8. Term of office of trustees.
115A-9. Board of trustees a body corporate; corporate name and powers; title to property.
115A-9.1. Sale, exchange or lease of property.
115A-10. Trustees declared to be commissioners for special purpose.
115A-11. Compensation of trustees.
115A-12. Organization of boards; meetings.
115A-13. Removal of trustees.
115A-14. Powers and duties of trustees.
115A-14.1. Traffic regulations; fines and penalties.
115A-15. State Retirement System for Teachers and State Employees; social security.
115A-16. Workmen's Compensation Act applicable to institutional employees.
115A-17. Waiver of governmental immunity from liability for negligence of agents and employees of institutions; liability insurance.
115A-17.1. Purchase of annuity or retirement income contracts for employees.

Article 3.

Financial Support.

115A-18. State financial support of institutions.
115A-19. Local financial support of institutions.
115A-20. Providing local public funds for institutions established under this Chapter; elections.
115A-21. Providing local public funds for institutions previously established.
115A-22. Requests for elections to provide funds for institutions.
115A-23. Elections on question of conversion of institutions and issuance of bonds therefor.
115A-24. Payment of expenses of special elections under Chapter.
115A-25. Authority to issue bonds and notes, to levy taxes and to appropriate nontax revenues.
115A-26. Student tuition and fees.

Article 4.

Budgeting, Accounting, and Fiscal Management.

115A-27. Preparation and submission of institutional budgets.
115A-28. Administration of institutional budgets for local public funds.
115A-29. Payment of State and local public funds to boards of trustees.
115A-30. Disbursement of institutional funds.
115A-31. Purchase of equipment and supplies.
115A-32. Audits of institutional accounts.
115A-33. Surety bonds.
115A-34. Fire and casualty insurance on institutional buildings and contents.
115A-35. Liability insurance; tort actions against boards of trustees.

Article 5.

Special Provisions.

115A-36. Authorization for transfer of State appropriations.
115A-37. Multiple-county administrative areas.
115A-38. Special provisions for Central Piedmont Community College.
115A-38.1. Special provisions for Onslow County Technical Institute.

Article 6.

Textile Training School.

115A-39. Creation of board of trustees; members and terms of office; no compensation.
115A-40. Powers of board.
115A-41. Board vested with powers and authority of former boards.
115A-42. Persons eligible to attend institution; subjects taught.

ARTICLE 1.

General Provisions for State Administration.

§ 115A-1. Statement of purpose. — The purposes of this Chapter are to provide for the establishment, organization, and administration of a system of educational institutions throughout the State offering courses of instruction in one or more of the general areas of two-year college parallel, technical, vocational, and adult education programs, to serve as a legislative charter for such institutions, and to authorize the levying of local taxes and the issuing of local bonds for the support thereof. The major purpose of each and every institution operating under the provisions of this Chapter shall be and shall continue to be the offering of vocational and technical education and training, and of basic, high school level, academic education needed in order to profit from vocational and technical education, for students who are high school graduates or who are beyond the compulsory age limit of the public school system and who have left the public schools. (1963, c. 448, s. 23; 1969, c. 562, s. 1.)

Programs of Community Colleges Must Be Undertaken for Educational Purposes; Business and Service Ventures, Not for Educational Purposes Are Improper. — See opinion of Attorney General to Mr. John M. Jenkins, Director, N.C. Vocational Textiles School, 41 N.C.A.G. 790 (1972).

Applied in Kiser v. Snyder, 17 N.C. App. 445, 194 S.E.2d 638 (1973).

§ 115A-2. Definitions. — As used in this Chapter:

(1) The "administrative area" of an institution comprises the county or counties directly responsible for the local financial support and local administration of such institution as provided in this Chapter.

(2) The term "community college" is defined as an educational institution operating under the provisions of this Chapter and dedicated primarily to the educational needs of the particular area for which established, and

a. Which offers the freshman and sophomore courses of a college of arts and sciences,

b. Which shall offer organized curricula for the training of technicians,

c. Which shall offer vocational, trade, and technical specialty courses and programs, and

d. Which shall offer courses in general adult education.

(3) The term "industrial education center" is defined as an educational institution operating under the provisions of this Chapter and dedicated primarily to the educational needs of the area for which established, and

a. Which offers vocational, trade, and technical specialty courses and programs, and

b. Which shall offer courses in general adult education.

(4) The term "institution" refers to a community college, a technical institute, or an industrial education center.

(5) The term "State Board of Education" refers to the State Board of Education as established and described in Article IX, Sec. 8, of the Constitution of North Carolina.

(6) The "tax-levying authority" of an institution is the board of commissioners of the county or all of the boards of commissioners of the counties, jointly, which constitute the administrative area of the institution.

(7) The term "technical institute" is defined as an educational institution operating under the provisions of this Chapter and dedicated primarily

to the educational needs of the particular area for which established, and

a. Which offers organized curricula for the training of technicians,

b. Which shall offer vocational, trade, and technical specialty courses and programs, and

c. Which shall offer courses in general adult education.

(8) The term "regional institution" means an institution which serves four or more counties which have been assigned as of July 1, 1973 to the institution by the Department of Community Colleges for purposes of conducting adult education classes. (1963, c. 448, s. 23; 1969, c. 562, s. 2; 1973, c. 590, s. 1.)

Editor's Note. — The 1973 amendment added subdivision (8).

The reference to Article IX, § 8 of the Constitution of North Carolina is to a section existing prior to the revision of the Constitution by Session Laws 1969, c. 1258. For present constitutional provision as to the State Board of Education, see N.C. Const., Art. IX, § 4.

§ 115A-3. State Board of Education to establish department to administer system of educational institutions. — The State Board of Education is authorized to establish and organize a department to provide state-level administration, under the direction of the Board, of a system of community colleges, technical institutes, and industrial education centers, separate from the free public school system of the State. The Board shall have authority to adopt and administer all policies, regulations, and standards which it may deem necessary for the establishment and operation of the department. The personnel of the department shall be governed by the same policies as the personnel of the other departments of the Board of Education and shall be subject to the provisions contained in Article 2, Chapter 143 of the General Statutes; except the position of the director or chief administrative officer of the department shall be exempt from the provisions of the State Personnel Act, and the compensation of this position shall be fixed by the Governor, upon the recommendation of the State Board of Education, subject to approval by the Advisory Budget Commission.

The State Board of Education shall appoint an Advisory Council consisting of at least seven members to advise the Board on matters relating to personnel, curricula, finance, articulation, and other matters concerning institutional programs and coordination with other educational institutions of the State. Two members of the Advisory Council shall be members of the Board of Governors of the University of North Carolina or of its professional staff, and two members of the Advisory Council shall be members of the faculties or administrative staffs of institutions of higher education in this State. (1963, c. 448, s. 23; 1971, c. 1244, s. 14.)

Editor's Note. — Article 2, Chapter 143, referred to in the first paragraph, was repealed by Session Laws 1965, c. 640, s. 1. For present provisions as to the State Personnel System, see §§ 126-1 through 126-12.

State Government Reorganization. — The Department of Community Colleges was transferred to the Department of Public Education by § 143A-43, enacted by Session Laws 1971, c. 864.

§ 115A-4. Establishment and transfer of institutions. — After July 1, 1963, the establishment of all community colleges, technical institutes, and industrial education centers shall be subject to the prior approval of the State Board of Education and each institution shall be established only in accordance with the provisions of this Chapter and the regulations, standards, and procedures adopted by the Board not inconsistent herewith. In no case, however, shall

approval be granted by the Board for the establishment of an institution until it has been demonstrated to the satisfaction of the Board that a genuine educational need exists within a proposed administrative area, that existing public and private post-high-school institutions in the area will not meet the need, that adequate local financial support for the institution will be provided, that public schools in the area will not be affected adversely by the local financial support required for the institution, and that funds sufficient to provide State financial support of the institution are available.

In approving the request of the board of trustees of an industrial education center for the establishment of an educational program, it shall be a matter of general policy of the State Board of Education to require that it be demonstrated to the satisfaction of the State Board of Education that the educational and occupational needs the proposed program is designed to meet are not already met by similar educational programs maintaining standards acceptable to the State Board of Education in other public or private schools in the administrative area of the industrial education center.

In approving the request of the board of trustees of an industrial education center for the establishment of an educational program, it shall be a matter of general policy of the State Board of Education to require that it be demonstrated to the satisfaction of the State Board of Education that the industrial education center is not assuming the continuing responsibility for providing for individual manufacturing firms or corporations the routine training required for regular operator training in the factories of the firm or corporation made necessary because of turnover of personnel.

The State Board of Education and the Board of Governors of the University of North Carolina shall cooperate in providing for the orderly transferal of the administration and operation of College of the Albemarle, Mecklenburg College, and all other public community colleges designated by the General Assembly, from the provisions of Article 3, Chapter 116, of the General Statutes of North Carolina to the provisions of this Chapter. Such transferal shall be accomplished as provided by this Chapter and regulations and procedures adopted jointly by the two boards. The two boards shall also provide by regulation for the transfer, without consideration, of title to all property, funds, and unexpended appropriations of the colleges held heretofore by the boards of trustees of the colleges from such boards to the respective boards of trustees established pursuant to this Chapter.

Provision shall be made for the orderly transferal of the administration and operation of all industrial education centers from local boards of education of the State public school system to boards of trustees established pursuant to this Chapter for the purpose of administering and operating such centers as provided in this Chapter. Such transferal shall be accomplished as provided by this Chapter and regulations and procedures adopted by the State Board of Education. Upon transferal of each industrial education center the local board of education previously operating the center shall transfer, without consideration, title to the property, funds, and unexpended appropriations heretofore held by such board for the center to the board of trustees established for the center pursuant to this Chapter. Provided, if an industrial education center ceases to operate as an institution, as defined in this Chapter, title to real property transferred to a board of trustees from the local board of education, previously operating the center, shall revert to such board of education, and said board of trustees shall thereupon, by proper instrument, convey the same to such board of education. Where plans are being made to relocate an existing industrial education center by moving it from buildings on or adjacent to a senior high school campus, the State Board of Education may designate the local board of education now operating the industrial education center as the board of trustees for the continued operation of the industrial education center until such

time as the industrial education center is so relocated; and the board of trustees provided for in this Chapter may be appointed to develop the new or reorganized institution but shall not have control of the existing industrial education center until it is transferred to the new site.

The approval of any new institution, or the conversion of any existing institution into a new type of institution, or the expenditures of any State funds for any capital improvements at existing institutions shall be subject to the prior approval of the Governor and the Advisory Budget Commission. The expenditure of State funds at any institution herein authorized to be approved by the Board shall be subject to the terms of the Executive Budget Act unless specifically otherwise provided in this Chapter. (1963, c. 448, s. 23; 1965, c. 1028; 1971, c. 1244, s. 14.)

Questions Involving Section Must Be Determined by State Courts. — Whether the plaintiff has any rights under this section, whether the plaintiff is covered under this section and whether the plaintiff's school meets the required educational and occupational needs, is maintaining proper standards, and is in the administrative area are questions involving this section and must be determined by State and not federal courts. Harrell v. Trustees of Beaufort County Technical Inst., 354 F. Supp. 50 (E.D.N.C. 1973).

Where plaintiff claimed the State Board of Education violated its statutory duty by allowing another trade school within one mile of his, thereby defrauding him and depriving him of property, the court felt that no federal question was presented, whether his claim was for fraud or under this section. Harrell v. Trustees of Beaufort County Technical Inst., 354 F. Supp. 50 (E.D.N.C. 1973).

§ 115A-5. Administration of institutions by State Board of Education; extension courses; personnel exempt from State Personnel Act; contracting, etc., for establishment and operation of extension units of community college system; use of existing public school facilities. — The State Board of Education may adopt and execute such policies, regulations and standards concerning the establishment and operation of institutions as the Board may deem necessary to insure the quality of educational programs, to promote the systematic meeting of educational needs of the State, and to provide for the equitable distribution of State and federal funds to the several institutions.

In order to make instruction as accessible as possible to all citizens, the teaching of curricular courses and of noncurricular extension courses at convenient locations away from institution campuses as well as on campuses is authorized and shall be encouraged. A pro rata portion of the established regular tuition rate charged a full-time student shall be charged a part-time student taking any curriculum course. In lieu of any tuition charge, the State Board of Education shall establish a uniform registration fee, or a schedule of uniform registration fees, to be charged students enrolling in extension courses for which instruction is financed primarily from State funds; provided, however, that the State Board of Education may provide by general and uniform regulations for waiver of tuition and registration fees for training courses for volunteer firemen, local law-enforcement officers, and prison inmates.

The State Board of Education shall establish standards and scales for salaries and allotments paid from funds administered by the Board, and all employees of the institutions shall be exempt from the provisions of the State Personnel Act. The Board shall have authority with respect to individual institutions: to approve sites, buildings, building plans, budgets; to approve the selection of the chief administrative officer; to establish and administer standards for professional personnel, curricula, admissions, and graduation; to regulate the awarding of degrees, diplomas, and certificates; to establish and regulate student tuition and fees and financial accounting procedures.

The State Board of Education is authorized to enter into agreements with county and city boards of education, upon approval by the Governor and the

Advisory Budget Commission, for the establishment and operation of extension units of the community college system. The State Board is further authorized to provide the financial support for matching capital outlay and for operating and equipping extension units as provided in this Chapter for other institutions, subject to available funds.

On petition of the board of education of the school administrative unit in which an institution is proposed to be established, the State Board of Education may approve the utilization by such proposed institution of existing public school facilities, if the Board finds:

(1) That an adequate portion of such facilities can be devoted to the exclusive use of the institution, and

(2) That such utilization will be consistent with sound educational considerations. (1963, c. 448, s. 23; 1967, c. 652; 1969, c. 1294; 1973, c. 768.)

Editor's Note. — The 1973 amendment added the second paragraph.

§ 115A-6. Withdrawal of State support. — The State Board of Education may withdraw or withhold State financial and administrative support of any institutions subject to the provisions of this Chapter in the event that:

(1) The required local financial support of an institution is not provided;

(2) Sufficient State funds are not available;

(3) The officials of an institution refuse or are unable to maintain prescribed standards of administration or instruction; or

(4) Local educational needs for such an institution cease to exist. (1963, c. 448, s. 23.)

ARTICLE 2.

Local Administration.

§ 115A-7. Each institution to have board of trustees; selection of trustees. — (a) Each community college and technical institute established or operated pursuant to this Chapter shall be governed by a board of trustees consisting of 12 members, who shall be selected by the following agencies.

Group One — four trustees, elected by the board of education of the public school administrative unit located in the administrative area of the institution. If there are two or more public school administrative units, whether city or county units, or both, located within the administrative area, the trustees shall be elected jointly by all of the boards of education of those units, each board having one vote in the election of each trustee, except as provided in G.S. 115A-37.

Group Two — four trustees, elected by the board of commissioners of the county in which the institution is located. Provided, however, if the administrative area of the institution is composed of two or more counties, the trustees shall be elected jointly by the boards of commissioners of all those counties, each board having one vote in the election of each trustee.

Group Three — four trustees, appointed by the Governor.

(b) Each industrial education center established or operated pursuant to this Chapter shall be governed by a board of trustees consisting of eight members, four of whom shall be selected by the agencies provided for Group One in subsection (a) above and four by the agencies provided for Group Two above.

(c) All trustees shall be residents of the administrative area of the institution for which they are selected or of counties contiguous thereto.

(d) Vacancies occurring in any group for whatever reason shall be filled for the remainder of the unexpired term by the agency or agencies authorized to select trustees of that group and in the manner in which regular selections are made. Should the selection of a trustee not be made by the agency or agencies having the authority to do so within 60 days after the date on which a vacancy occurs, whether by creation or expiration of a term or for any other reason, the Governor shall fill the vacancy by appointment for the remainder of the unexpired term. (1963, c. 448, s. 23.)

§ 115A-8. Term of office of trustees. — Trustees shall serve for terms of eight years, except that initially:

(1) For all industrial education centers and technical institutes and for those community colleges for which boards of trustees first shall be established pursuant to the provisions of this Chapter, terms of the members of each board shall be so set by the selecting agencies that the term of a member in each group in G.S. 115A-7(a) shall expire on June 30 of every other year, the shortest term to expire on June 30 of the next odd-numbered year following the date the board of trustees is established. Thereafter, all terms shall be eight years and shall commence on July 1.

(2) For those community colleges which hereafter shall be operated pursuant to this Chapter but for which the boards of trustees have previously been appointed pursuant to the provisions of Article 3, Chapter 116, of the General Statutes, all trustees previously appointed and currently serving shall continue to serve until the expiration of their respective terms.

a. As the terms of the four trustees previously appointed by the city and/or county boards of education expire, their successors shall be selected by the agencies specified for Group One in G.S. 115A-7, so that a term shall expire on June 30 of every other year, the shortest term to expire on June 30 of the next odd-numbered year following the date the successors are appointed. Thereafter, all terms shall be eight years and shall commence July 1.

b. As the terms of the four trustees previously appointed by the governing board of the municipality and/or the board of commissioners expire, their successors shall be selected by the agencies specified for Group Two in G.S. 115A-7, so that a term shall expire on June 30 of every other year, the shortest term to expire on June 30 of the next odd-numbered year following the date the successors are appointed. Thereafter, all terms shall be eight years and shall commence on July 1.

c. As the terms of the four trustees previously appointed by the Governor expire, their successors shall be appointed by the Governor, so that a term shall expire on June 30 of every other year, the shortest term to expire on June 30 of the next odd-numbered year following the date the successors are appointed. Thereafter, all terms shall be eight years and shall commence on July 1. (1963, c. 448, s. 23.)

§ 115A-9. Board of trustees a body corporate; corporate name and powers; title to property. — The board of trustees of each institution shall be a body corporate with all powers usually conferred upon such bodies to enable it to acquire, hold, and transfer real and personal property, to enter into contracts, to institute and defend legal actions and suits, and to exercise such other rights and privileges as may be necessary for the management and administration of the institution and for carrying out the provisions and purposes of this Chapter. The official title of each board shall be "The Trustees of ....."

(filling in the name of the institution) and such title shall be the official corporate name of the institution.

The several boards of trustees shall hold title to all real and personal property donated to their respective institutions or purchased with funds provided by the tax-levying authorities of their respective institutions. Title to equipment furnished by the State shall remain in the State Board of Education. In the event that an institution shall cease to operate, title to all real and personal property donated to the institution or purchased with funds provided by the tax-levying authorities, except as provided for in G.S. 115A-4, shall vest in the county in which the institution is located, unless the terms of the deed of gift in the case of donated property provides otherwise, or unless in the case of two or more counties forming a joint institution the contract provided for in G.S. 115A-37 provides otherwise. (1963, c. 448, s. 23.)

§ 115A-9.1. Sale, exchange or lease of property. — When in the opinion of the board of trustees of any institution organized under the provisions of this Chapter, the use of any property, real or personal, owned or held by said board of trustees is unnecessary or undesirable for the purposes of said institution, the board of trustees, subject to prior approval of the State Board of Education, may sell, exchange, or lease such property in the same manner as is provided by law for the sale, exchange, or lease of school property by county or city boards of education. The proceeds of any such sale or lease shall be used for capital outlay purposes. (1969, c. 338.)

§ 115A-10. Trustees declared to be commissioners for special purpose. — All trustees of institutions in this Chapter are declared to be commissioners for special purposes within the meaning of Article XIV, Sec. 7, of the Constitution of North Carolina. (1963, c. 448, s. 23.)

Editor's Note. — The reference to Article XIV, § 7, of the Constitution of North Carolina is to a section existing prior to the revision of the Constitution by Session Laws 1969, c. 1258. For present provisions as to dual office holding, see N.C. Const., Art. VI, § 9.

§ 115A-11. Compensation of trustees. — Trustees shall receive no compensation for their services but shall receive reimbursement, according to regulations adopted by the State Board of Education, for cost of travel, meals, and lodging while performing their official duties. (1963, c. 448, s. 23.)

§ 115A-12. Organization of boards; meetings. — At the first meeting after its selection, each board of trustees shall elect from its membership a chairman, who shall preside at all board meetings, and a vice-chairman, who shall preside in the absence of the chairman. The trustees shall also elect a secretary, who need not be a trustee, to keep the minutes of all board meetings. All three officers of the board shall be elected for a period of one year but shall be eligible for reelection by the board.

Each board of trustees shall meet as often as may be necessary for the conduct of the business of the institution but shall meet at least once every three months. Meetings may be called by the chairman of the board or by the chief administrative officer of the institution. (1963, c. 448, s. 23.)

§ 115A-13. Removal of trustees. — Should the State Board of Education have sufficient evidence that any member of the board of trustees of an institution is not capable of discharging, or is not discharging, the duties of his office as required by law or lawful regulation, or is guilty of immoral or disreputable conduct, the Board shall notify the chairman of such board of trustees, unless the chairman is the offending member, in which case the other members of the board shall be notified. Upon receipt of such notice there shall be a meeting of the board of trustees for the purpose of investigating the charges, at which

meeting a representative of the State Board of Education may appear to present evidence of the charges. The allegedly offending member shall be given proper and adequate notice of the meeting and the findings of the other members of the board shall be recorded, along with the action taken, in the minutes of the board of trustees. If the charges are, by an affirmative vote of two thirds of the members of the board, found to be true, the board of trustees shall declare the office of the offending member to be vacant.

Nothing in this section shall be construed to limit the authority of a board of trustees to hold a hearing as provided herein upon evidence known or presented to it. (1963, c. 448, s. 23.)

§ 115A-14. Powers and duties of trustees. — The trustees of each institution shall constitute the local administrative board of such institution, with such powers and duties as are provided in this Chapter and are delegated to it by the State Board of Education. Included in the powers granted to the trustees are the following:

(1) To elect a president or chief administrative officer of the institution for such term and under such conditions as the trustees may fix, such election to be subject to the approval of the State Board of Education.

(2) To elect or employ all other personnel of the institution upon nomination by the president or chief administrative officer, subject to standards established by the State Board of Education.

(3) To purchase any land, easement, or right-of-way which shall be necessary for the proper operation of the institution, when such site has been approved by the State Board of Education, and, if necessary, to acquire land by condemnation in the same manner and under the same procedures as provided in Article 2, Chapter 40 of the General Statutes. For the purpose of condemnation, the determination by the trustees as to the location and amount of land to be taken and the necessity therefor shall be conclusive.

(4) To apply the standards and requirements for admission and graduation of students and other standards established by the State Board of Education.

(5) To receive and accept private donations, gifts, bequests, and the like and to apply them or invest any of them and apply the proceeds for purposes and upon the terms which the donor may prescribe and which are consistent with the provisions of this Chapter and the regulations of the State Board of Education.

(6) To provide all or part of the instructional services for the institution by contracting with other public or private educational institutions of the State, according to regulations and standards adopted by the State Board of Education.

(7) To perform such other acts and do such other things as may be necessary or proper for the exercise of the foregoing specific powers, including the adoption and enforcement of all reasonable rules, regulations, and bylaws for the government and operation of the institution under this Chapter and for the discipline of students. (1963, c. 448, s. 23.)

§ 115A-14.1. Traffic regulations; fines and penalties. — (a) All of the provisions of Chapter 20 of the General Statutes relating to the use of highways of the State of North Carolina and the operation of motor vehicles thereon are hereby made applicable to the streets, roads, alleys and driveways on the campuses of all institutions in the North Carolina Community College System. Any person violating any of the provisions of Chapter 20 of the General Statutes as herein made applicable, in or on the streets, roads, alleys and driveways on the campuses of institutions in the North Carolina Community College System

shall, upon conviction thereof, be punished as therein prescribed and as provided by Chapter 20 of the General Statutes relating to motor vehicles. Nothing herein contained shall be construed as in any way interfering with the ownership and control of such streets, roads, alleys and driveways on the campuses of institutions in the system as is now vested by law in the trustees of each individual institution in the North Carolina Community College System.

(b) The trustees are authorized and empowered to make additional rules and regulations and to adopt additional ordinances with respect to the use of the streets, roads, alleys and driveways and to establish parking areas on or off the campuses not inconsistent with the provisions of Chapter 20 of the General Statutes of North Carolina. Upon investigation, the trustees may determine and fix speed limits on streets, roads, alleys, and driveways subject to such rules, regulations, and ordinances, lower than those provided in G.S. 20-141. The trustees may make reasonable provisions for the towing or removal of unattended vehicles found to be in violation of rules, regulations and ordinances. All rules, regulations and ordinances adopted pursuant to the authority of this section shall be recorded in the proceedings of the trustees, printed, and copies of such rules, regulations and ordinances shall be filed in the office of the Secretary of State of North Carolina. Any person violating any such rules, regulations, or ordinances shall, upon conviction thereof in a legally constituted court of the State of North Carolina, be guilty of a misdemeanor, and shall be punishable by a fine of not exceeding fifty dollars ($50.00) or imprisonment for not exceeding 30 days or, in the discretion of the court, both such fine and imprisonment.

(c) The trustees may by rules, regulations, or ordinances provide for a system of registration of all motor vehicles where the owner or operator does park on the campus or keeps said vehicle on the campus. The trustees shall cause to be posted at appropriate places on campus notice to the public of applicable parking and traffic rules, regulations, and ordinances governing the campus over which it has jurisdiction. The trustees may by rules, regulations, or ordinances establish or cause to have established a system of citations that may be issued to owners or operators of motor vehicles who violate established rules, regulations, or ordinances. The trustees shall provide for the administration of said system of citations; establish or cause to be established a system of fines to be levied for the violation of established rules, regulations and ordinances; and enforce or cause to be enforced the collection of said fines. The fine for each offense shall not exceed five dollars ($5.00), which funds shall be retained in the institution and expended in the discretion of the trustees. The trustees shall be empowered to exercise the right to prohibit repeated violators of such rules, regulations, or ordinances from parking on the campus. (1971, c. 795, ss. 1-3.)

§ 115A-15. State Retirement System for Teachers and State Employees; social security. — Solely for the purpose of applying the provisions of Chapter 135 of the General Statutes of North Carolina, "Retirement System for Teachers and State Employees, Social Security," the institutions of this Chapter are included within the definition of the term "Public school," and the institutional employees are included within the definition of the term "Teacher," as these terms are defined in G.S. 135-1. (1963, c. 448, s. 23.)

§ 115A-16. Workmen's Compensation Act applicable to institutional employees. — The provisions of Chapter 97 of the General Statutes of North Carolina, the Workmen's Compensation Act, shall apply to all institutional employees. The State Board of Education shall make the necessary arrangements to carry out those provisions of Chapter 97 which are applicable to employees whose wages are paid in whole or in part from State funds. The State shall be liable for compensation, based upon the average weekly wage as

defined in the act, of an employee regardless of the portion of such wage paid from other than State funds.

The board of trustees of each institution shall be liable for workmen's compensation for employees whose salaries or wages are paid by the board entirely from local public or special funds. Each board of trustees is authorized to purchase insurance to cover such compensation liability and to include the cost of insurance in the annual budget of the institution.

The provisions of this section shall not apply to any person, firm or corporation making voluntary contributions to institutions for any purpose, and such a person, firm, or corporation shall not be liable for the payment of any sum of money under the provisions of this section. (1963, c. 448, s. 23.)

§ 115A-17. Waiver of governmental immunity from liability for negligence of agents and employees of institutions; liability insurance. — The board of trustees of any institution, by obtaining liability insurance as provided in G.S. 115A-35, is authorized to waive its governmental immunity from liability for the death or injury of person or for property damage caused by the negligence or tort of any agent or employee of the board of trustees when the agent or employee is acting within the scope of his authority or the course of his employment. All automobiles, buses, trucks, or other motor vehicles intended primarily for use on the public roads and highways which are the property of a board of trustees shall be insured at all times with liability insurance as provided in G.S. 115A-35. Governmental immunity shall be deemed to have been waived by the act of obtaining liability insurance, but only to the extent that the board is indemnified for the negligence or torts of its agents and employees and only as to claims arising after the procurement of liability insurance and while such insurance is in force. (1963, c. 448, s. 23.)

Stated in Steelman v. City of New Bern, 279 N.C. 589, 184 S.E.2d 239 (1971).

§ 115A-17.1. Purchase of annuity or retirement income contracts for employees. — Notwithstanding any provision of law relating to salaries and/or salary schedules for the pay of faculty members, administrative officers, or any other employees, of community colleges, technical institutes or industrial education centers, the board of trustees of any of the above institutions may authorize the business officer or agent of same to enter into annual contracts with any of the above officers, agents and employees which provide for a reduction in salary below the total established compensation or salary schedule for a term of one year. The financial officer or agent shall use the funds derived from the reduction in the salary of the officer, agent or employee to purchase a nonforfeitable annuity or retirement income contract for the benefit of said officer, agent or employee. An officer, agent or employee who has agreed to a salary reduction for this purpose shall not have the right to receive the amount of the salary reduction in cash or in any other way except the annuity or retirement income contract. Funds used for the purchase of an annuity or retirement income contract shall not be in lieu of any amount earned by the officer, agent or employee before his election for a salary reduction has become effective. The agreement for salary reductions referred to herein shall be effected under any necessary regulations and procedures adopted by the State Board of Education and on forms prepared by the State Board of Education. Notwithstanding any other provisions of this section or law, the amount by which the salary of any officer, agent or employee is reduced pursuant to this section shall not be excluded, but shall be included, in computing and making payroll deductions for social security and retirement system purposes, and in

computing and providing matching funds for retirement system purposes. (1965, c. 366.)

ARTICLE 3.

Financial Support.

§ 115A-18. State financial support of institutions. — (a) The State Board of Education shall be responsible for providing from sources available to the Board funds to meet the financial needs of institutions, as determined by policies and regulations of the Board, for the following budget items:

(1) Capital outlay: Furniture and equipment for administrative and instructional purposes, new library books, and other items of capital outlay approved by the Board. Provided, the State Board of Education may, on an equal matching-fund basis from appropriations made by the State for the purpose, grant funds to individual community colleges and technical institutes, including those converted from industrial education centers, for the purchase, construction and remodeling of institutional buildings determined by the State Board of Education to be necessary for the instructional programs or administration of such institutions. For the purpose of determining amounts of matching State funds, local funds shall include local expenditures made prior to the enactment of this Chapter or prior to an institution becoming a community college or technical institute pursuant to the provisions of this Chapter, when such expenditures were made for the purchase, construction, and remodeling of institutional buildings subsequently determined by the State Board of Education to be necessary as herein specified, and provided such local expenditures have not previously been used as the basis for obtaining matching State funds under the provisions of this Chapter or any other laws of the State.

(2) Current expenses:

a. General administration:
   1. Salaries and travel of trustees and administrative staff.
   2. Cost of bonding institutional employees for the protection of State funds and property.
   3. Office expenses.
   4. Other costs of general administration approved by the Board.

b. Instructional services:
   1. Salaries and travel of instructional staff and clerical employees.
   2. Instructional supplies and materials.
   3. Commencement expenses.
   4. Other costs of instructional services approved by the Board.

c. Maintenance of plant: Maintenance and replacement of furniture and equipment furnished by the State.

d. Fixed charges:
   1. Employer's contributions to social security and State retirement funds for the portion of institutional employees' salaries paid from State and federal funds.
   2. Cost of workmen's compensation for institutional employees paid in whole or in part from State or federal funds.

e. Auxiliary services:
   1. Operation of libraries, including salaries and travel of staff; replacement of books; and costs of supplies, materials, periodicals, and newspapers.

2. Other costs of auxiliary services approved by the Board.

(3) Additional support for regional institutions: Matching funds to be used with local funds to meet the financial needs of the regional institutions for the items set out in G.S. 115A-19. The amount of matching funds to be provided by the State under this section shall be determined as follows: The population of the county in which the regional institution is located shall be called the "local factor"; the combined populations of all the other counties served by the institution shall be called the "State factor." When the budget for the items listed in G.S. 115A-19 has been approved under the procedures set out in G.S. 115A-27, the county in which the regional institution is located shall provide a percentage to be determined by dividing the local factor by the sum of the local factor and the State factor. The State shall provide a percentage of the necessary funds to meet this budget, the percentage to be determined by dividing the State factor by the sum of the local factor and the State factor. If the local county provides less than its proportionate share, the amount of State funds provided shall be reduced by the same proportion as were the county funds.

Wherever the word "population" is used in this subdivision, it shall mean the population of the particular area in accordance with the latest U.S. census as may be updated by the State Department of Administration or the U.S. Bureau of Census.

(b) The State Board of Education is authorized to accept, receive, use, or reallocate to the institutions any federal funds or aids that have been or may be appropriated by the government of the United States for the encouragement and improvement of any phase of the programs of the institutions. (1963, c. 448, s. 23; 1973, c. 590, ss. 2, 3; c. 637, s. 1.)

Editor's Note. — The first 1973 amendment added subdivision (3) of subsection (a).

The second 1973 amendment deleted the former last sentence of subdivision (a)(1), which limited grants for capital or permanent improvements to any single institution to $500,000.

§ 115A-19. Local financial support of institutions. — (a) The tax-levying authority of each institution shall be responsible for providing, in accordance with the provisions of G.S. 115A-20 or 115A-21, as appropriate, adequate funds to meet the financial needs of the institutions for the following budget items:

(1) Capital outlay: Acquisition of land; erection of all buildings; alterations and additions to buildings; purchase of automobiles, buses, trucks, and other motor vehicles; purchase of all equipment necessary for the maintenance of buildings and grounds and operation of plant; and purchase of all furniture and equipment not provided for administrative and instructional purposes.

(2) Current expenses:

a. General administration:

1. Cost of bonding institutional employees for the protection of local funds and property.
2. Cost of auditing local funds.
3. Cost of elections held in accordance with G.S. 115A-20 and 115A-22.
4. Legal fees incurred in connection with local administration and operation of the institution.

b. Operation of plant:

1. Wages of janitors, maids, and watchmen.
2. Cost of fuel, water, power, and telephones.
3. Cost of janitorial supplies and materials.

4. Cost of operation of motor vehicles.
5. Any other expenses necessary for plant operation.

c. Maintenance of plant:
1. Cost of maintenance and repairs of buildings and grounds.
2. Salaries of maintenance and repair employees.
3. Maintenance and replacement of furniture and equipment provided from local funds.
4. Maintenance of plant heating, electrical, and plumbing equipment.
5. Maintenance of all other equipment, including motor vehicles, provided by local funds.
6. Any other expenses necessary for maintenance of plant.

d. Fixed charges:
1. Rental of land, buildings, and equipment.
2. Cost of insurance for buildings, contents, motor vehicles, workmen's compensation for institutional employees paid from local funds, and other necessary insurance.
3. Employer's contribution to retirement and social security funds for that portion of institutional employees' salaries paid from local funds.
4. And any tort claims awarded against the institution due to the negligence of institutional employees.

(b) The board of trustees of each institution may apply local public funds provided in accordance with G.S. 115A-20(a) or 115A-21(a), as appropriate, or private funds, or both, to the supplementation of items of the current expense budget financed from State funds, provided a supplemental current expense budget is submitted in accordance with G.S. 115A-27(3). (1963, c. 448, s. 23.)

§ 115A-20. Providing local public funds for institutions established under this Chapter; elections. — (a) Except as provided in G.S. 115A-21, the tax-levying authority of an institution may provide for local financial support of the institution as follows:

(1) By appropriations from nontax revenues in a manner consistent with the County Fiscal Control Act, provided the continuing authority to make such appropriations shall have been approved by a majority of the qualified voters of the administrative area who shall vote on the question in an election held for such purpose, and/or

(2) By a special annual levy of taxes within a maximum annual rate which maximum rate shall have been approved by a majority of the qualified voters of the administrative area who shall vote on the question of establishing or increasing the maximum annual rate in an election held for such purpose; and

(3) By issuance of bonds, in the case of capital outlay funds, provided that each issuance of bonds shall be approved by a majority of the qualified voters of each county of the administrative area who shall vote on the question in an election held for that purpose. All bonds shall be subject to the Local Government Act and shall be issued pursuant to the County Finance Act. For the purpose of county debt limitations provided in that act, bonds issued for the purpose of this Chapter shall be considered to be "for other than school purposes" as that term is used in G.S. 153-84 and 153-87.

(b) At the election on the question of approving authority of the board of commissioners of each county in an administrative area (the tax-levying authority) to appropriate funds from nontax revenues and/or a special annual levy of taxes, the ballot furnished the qualified voters in each county may be worded substantially as follows: "For the authority of the board of commissioners to appropriate funds either from nontax revenues or from a

special annual levy of taxes not to exceed an annual rate of ..... cents per one hundred dollars ($100.00) of assessed property valuation, or both, for the financial support of ..... (name of the institution)" plus any other pertinent information and "Against the authority of the board of commissioners, etc.," with a square before each proposition, in which the voter may make a cross mark (X), but any other form of ballot containing adequate information and properly stating the question to be voted upon shall be construed as being in compliance with this section.

(c) The question of approving authority to appropriate funds and/or to levy special taxes and the question of approving an issue of bonds, when approval of each shall be necessary for the establishment or conversion of an institution, shall be submitted at the same election.

(d) All elections shall be held in the same manner as elections held under Article 9, Chapter 153, of the General Statutes of North Carolina, the County Finance Act, and may be held at any time fixed by the tax-levying authority of the administrative area or proposed administrative area of the institution for which such election is to be held.

(e) The State Board of Education shall ascertain that authority to provide adequate funds for the establishment and operation of an institution has been approved by the voters of a proposed administrative area before granting final approval for the establishment of an institution.

(f) Notwithstanding any present provisions of this Chapter, the tax-levying authority of each institution may at its discretion and upon its own motion provide by appropriations of nontax revenue and/or tax revenue, funds for the support of institutional purposes as set forth in G.S. 115A-19; but nothing herein shall be construed to authorize the issuance of bonds without a vote of the people. (1963, c. 448, s. 23; 1971, c. 402.)

Editor's Note. — Sections 153-84 and 153-87, referred to in subsection (a)(3), and Article 9, Chapter 153, referred to in subsection (d), were repealed by Session Laws 1973, c. 822. For present provisions as to counties, see Chapter 153A.

§ 115A-21. Providing local public funds for institutions previously established. — (a) For counties in which, immediately prior to the enactment of this Chapter, there was in operation or authorized a public community college or industrial education center which hereafter shall be operated pursuant to the provisions of this Chapter, the following provisions shall apply in providing local financial support for each such institution:

(1) Community colleges: The board of commissioners of a county in which is located a public community college heretofore operated or authorized to operate pursuant to Article 3, Chapter 116, of the General Statutes of North Carolina, may continue to levy special taxes annually for the local financial support of the college provided in G.S. 115A-19, to the maximum rate last approved by the voters of the county in accordance with the above Article. The board of commissioners may also provide all or part of such funds by appropriations, in a manner consistent with the County Fiscal Control Act, from nontax revenues. The question of increasing the maximum annual rate of a special tax may be submitted at an election held in accordance with the provisions of G.S. 115A-20(d) and the appropriate provisions of G.S. 115A-22.

(2) Industrial education centers: The board of commissioners of a county in which is located an industrial education center heretofore operated or authorized to operate as part of the public school system and which hereafter shall be operated as an industrial education center or technical institute as defined in this Chapter may levy special taxes annually at a rate sufficient to provide funds for the financial support

of the center or institute required by G.S. 115A-19(a). The board of commissioners may also provide all or part of such funds by appropriations, in a manner consistent with the County Fiscal Control Act, from nontax revenues. The board of commissioners is authorized to provide additional funds, either by special tax levies or by appropriations from nontax revenues, or both, to an amount equal to that required to be provided above, for the purpose of supplementing the current expense budget of the center or institute financed from State funds.

(b) The board of commissioners of a county in which is located one of the above public community colleges or industrial education centers may provide funds for capital outlay for such institution by the issuance of bonds. All bonds shall be issued in accordance with the appropriate provisions of G.S. 115A-20 and 115A-22.

(c) Public funds provided a community college or industrial education center prior to its becoming subject to the provisions of this Chapter and which remain to the credit of the institution upon its becoming subject to these provisions shall be expended only for the purposes prescribed by law when such funds were provided the institution. (1963, c. 448, s. 23; 1965, c. 842, s. 1.)

Editor's Note. — Session Laws 1963, c. 448, from which this Chapter derives, was ratified May 17, 1963, and became effective July 1, 1963.

§ 115A-22. Requests for elections to provide funds for institutions. — (a) Formal requests for elections on the question of authority to appropriate nontax revenues and/or levy special taxes and to issue bonds, when such elections are to be held for the purpose of establishing an institution, shall be originated and submitted only in the following manner:

(1) Proposed multiple-county administrative areas: Formal requests for elections may be submitted jointly by all county boards of education in the proposed administrative area, or by petition of fifteen percent (15%) of the number of qualified voters of the proposed area who voted in the last preceding election for Governor, to the boards of commissioners of all counties in the proposed area, who may fix the time for such election by joint resolution which shall be entered in the minutes of each board.

(2) Proposed single-county administrative area: Formal requests shall be submitted by the board of education of any public school administrative unit within the county of the proposed administrative area or by petition of fifteen percent (15%) of the number of qualified voters of the county who voted in the last preceding election for Governor, to the board of commissioners of the county of the proposed administrative area, who may fix the time for such election by resolution which shall be entered in the minutes of the board.

(b) Formal requests for elections on any of the questions specified in (a) above, or on the question of increasing the maximum annual rate of special taxes for the financial support of an institution with a properly established board of trustees, may be submitted to the tax-levying authority only by such board of trustees.

(c) All formal requests for elections regarding the levy of special taxes shall state the maximum annual rate for which approval is to be sought in an election.

(d) Nothing in this section shall be construed to deny or limit the power of the tax-levying authority of an institution to hold elections, of its own motion, on any or all the questions provided in this section, subject to the provisions herein. (1963, c. 448, s. 23.)

§ 115A-23. Elections on question of conversion of institutions and issuance of bonds therefor. — Whenever the board of trustees of an institution requests the State Board of Education to convert the institution from an industrial education center to a technical institute or community college, or from a technical institute to a community college, the Board may require, as a prerequisite to such conversion:

(1) The authorization by the voters of the administrative area of an annual levy of taxes within a specified maximum annual rate sufficient to provide the required local financial support for the converted institution, in an election held in accordance with the appropriate provisions of G.S. 115A-20 and 115A-22.

(2) The approval by the voters of the administrative area of the issuance of bonds for capital outlay necessary for the conversion of the institution, in an election held in accordance with the appropriate provisions of G.S. 115A-20 and 115A-22. (1963, c. 448, s. 23.)

§ 115A-24. Payment of expenses of special elections under Chapter. — The cost of special elections held under the authority of this Chapter in connection with the establishment of an institution shall be paid out of the general fund of the county or counties which shall conduct such elections. All special elections held on behalf of a duly established institution shall be paid by such institution and the expenses may be included in the annual institutional budgets. (1963, c. 448, s. 23.)

§ 115A-25. Authority to issue bonds and notes, to levy taxes and to appropriate nontax revenues. — Counties are authorized to issue bonds and notes and to levy special taxes to meet payments of principal and interest on such bonds or notes and to levy special taxes for the special purpose of providing local financial support of an institution and otherwise to appropriate nontax revenues for the financial support of an institution, in the manner and for the purposes provided in this Chapter.

Taxes authorized by this section are declared to be for a special purpose and may be levied notwithstanding any constitutional limitation or limitations imposed by any general or special law. (1963, c. 448, s. 23.)

§ 115A-26. Student tuition and fees. — The State Board of Education may fix and regulate all tuition and fees charged to students for applying to or attending any institution pursuant to this Chapter.

The receipts from all student tuition and fees, other than student activity fees, shall be State funds and shall be deposited as provided by regulations of the State Board of Education. (1963, c. 448, s. 23.)

Cross Reference. — As to contracts by minors borrowing for higher education at junior colleges and industrial education centers, see § 116-174.1.

ARTICLE 4.

Budgeting, Accounting, and Fiscal Management.

§ 115A-27. Preparation and submission of institutional budgets. — On or before the first day of May of each year, the trustees of each institution shall prepare and submit a capital outlay budget and a current expense budget, on forms provided by the State Board of Education, and may prepare in their discretion a supplemental current expense budget. The budgets shall be prepared and submitted for approval according to the following procedures:

(1) Capital outlay budget: The budget shall contain the items of capital outlay, as provided in G.S. 115A-18 and 115A-19, for which funds are requested, from whatever source. The budget shall be submitted first

to the tax-levying authority, which shall approve or disapprove, in whole or in part, that portion of the budget requesting local public funds. Upon approval by the tax-levying authority, the budget shall be submitted by the trustees to the State Board of Education, which may approve or disapprove, in whole or in part, that portion of the budget requesting State or federal funds.

(2) Current expense budget: The budget shall contain the items of current operating expenses, as provided in G.S. 115A-18 and 115A-19, for which funds are requested, from whatever source. The budget shall be submitted first to the tax-levying authority, which shall approve or disapprove, in whole or in part, that portion of the budget requesting local public funds. Upon approval by the tax-levying authority, the budget shall be submitted by the trustees to the State Board of Education, which may approve or disapprove, in whole or in part, the entire budget. The State Board is authorized to withhold the allocation of State funds to an institution until a budget has been submitted to and approved by the Board.

(3) Supplemental current expense budget: The budget may contain any items of the current expense budget to be financed from State or federal funds which the trustees desire to supplement with local funds. The tax-levying authority shall approve or disapprove, in whole or in part, that portion of the budget requesting local public funds. An information copy of the budget as approved shall be filed with the State Board of Education.

(4) No public funds shall be provided an institution, either by the tax-levying authority or by the State, except in accordance with the budget provisions of this Chapter.

(5) The preparation of a budget for and the payment of interest and principal on indebtedness incurred on behalf of an institution shall be the responsibility of the county accountant or county accountants of the administrative area and the board of trustees of the institution shall have no duty or responsibility in this connection. (1963, c. 448, s. 23.)

§ 115A-28. Administration of institutional budgets for local public funds. — (a) Duty of boards of trustees: It shall be the duty of the board of trustees of each institution to pay all obligations incurred in the operation of the institution promptly and when due, and to this end boards of trustees shall inform the tax-levying authority from month to month of any anticipated expenditures which will exceed the current collection of taxes and such balance as may be on hand, if any, for the payment of said obligations, in order that the tax-levying authority may make provision for the funds to be available. If a board of trustees shall willfully create a debt that shall in any way cause the expense of the year to exceed the amount authorized in the budget, without the approval of the tax-levying authority, the indebtedness shall not be a valid obligation of the institution and the members of the board responsible for creating the debt may be held personally liable for the same.

(b) Duty of tax-levying authorities: It shall be the duty of the tax-levying authority of each institution to provide, as needed, the funds to meet the monthly expenditures, including salaries and other necessary operating expense, as set forth in a statement prepared by the board of trustees and in accordance with the approved budget. If the collection of taxes does not yield sufficient revenue for this purpose, it shall be the duty of the tax-levying authority to borrow against the amount approved in the budget and to issue short-term notes for the amount so borrowed in accordance with the provisions of the County Finance Act and the Local Government Act. The interest on all such notes shall be provided by the tax-levying authority in addition to the amount approved in the

budget, unless this item is specifically included in the budget. (1963, c. 448, s. 23.)

§ 115A-29. Payment of State and local public funds to boards of trustees. — (a) The State Board of Education may deposit funds in the State treasury to the credit of each institution in monthly installments, at such time and in such manner as may be necessary to meet the needs of the institution, or the Board may disburse State funds to each institution under policies and regulations established by the Board. Prior to the deposit or disbursement of State funds by the Board it shall be the duty of the board of trustees of each institution to file, on or before the first day of each month, with the State Board of Education a certified statement, on forms provided by the State Board of Education, of all expenditures, salaries, and other obligations that may be due and payable in the next succeeding month.

(b) Upon the basis of an approved budget, the county auditors or accountants of all counties of the administrative area of an institution shall determine the proportion of taxes, nontax revenues and other funds accruing to the current expense and capital outlay budgets of the institution and shall credit these funds to the institution as they are collected. The county treasurer or corresponding official of each county shall remit promptly at the end of each month all funds collected for current expenses and capital outlay, except bond funds, to the board of trustees of the institution.

In the event that a greater amount is collected and paid to the board of trustees of an institution than is authorized by its approved budgets for current expenses and capital outlay, the excess shall remain an unencumbered balance to be credited proportionally to those funds in the following fiscal year, and such excess shall not be spent, committed, or obligated unless the budget is revised with the approval of the board of trustees and the tax-levying authority.

(c) Funds received by the trustees of an institution from insurance payments for loss or damage to buildings shall be used for the repair or replacement of such buildings or, if the buildings are not repaired or replaced, to reduce proportionally the institutional indebtedness borne by the counties of the administrative area of the institution receiving the insurance payments. If such payments which are not used to repair or replace institutional buildings exceed the total institutional indebtedness borne by all counties of the administrative area, such excess funds shall remain to the credit of the institution and be applied to the next succeeding capital outlay budgets until the excess fund shall be expended. Funds received by the trustees of an institution for loss or damage to the contents of buildings shall be divided between the board of trustees and the State Board of Education in proportion to the value of the lost contents owned by the board of trustees and the State, respectively. That portion retained by the trustees shall be applied to the repair or replacement of lost contents or shall remain to the credit of the institution to be applied to the next succeeding capital outlay and current expense budgets, as appropriate, until such funds shall be expended. (1963, c. 448, s. 23.)

§ 115A-30. Disbursement of institutional funds. — Public funds provided for an institution shall be paid out as follows:

(1) State funds: All State funds received by or deposited to the credit of an institution shall be disbursed only upon warrants drawn on the State Treasurer and signed by two employees of the institution who shall have been designated by the board of trustees and who shall have been approved by the State Board of Education. Such funds may be disbursed in any other manner provided by regulations of the State Board of Education.

(2) Local funds: All local public funds received by or credited to an institution shall be disbursed on warrants signed by two employees of

the institution who shall have been designated by the board of trustees and who shall have been approved by the State Board of Education. Such warrants shall be countersigned by the appropriate county officer or officers as provided by law, but only if the funds required by such warrant are within the amount of funds remaining to the credit of the institution and are within the unencumbered balance of the appropriation for the item of expenditure according to the approved budgets of the institution: Provided, that in lieu of countersignature by the county officer or officers as provided by law, the board of county commissioners which appropriated the local public funds may from time to time, with the approval of the board of trustees of the institution, designate an employee of the institution to countersign the warrants, and the employee so designated shall countersign a warrant only if the funds required by such warrant are within the amount of funds remaining to the credit of the institution and are within the unencumbered balance of the appropriation for the item of expenditure according to the approved budgets of the institution. Each warrant shall be accompanied by an invoice, statement, voucher, or other basic document which indicates to the satisfaction of the countersigning county officer or officers that the issuance of such warrant is proper. (1963, c. 448, s. 23; 1965, c. 488, s. 2.)

Local Modification. — Duplin: 1965, c. 961, s. 1.

§ 115A-31. Purchase of equipment and supplies. — It shall be the duty of the several boards of trustees to purchase all supplies, equipment, and materials in accordance with contracts made by or with approval of the North Carolina Department of Administration. No contract shall be made by any board of trustees for purchases unless provision has been made in the budget of the institution to provide payment therefor, and in order to protect the State purchase contracts, it is the mandatory duty of the board of trustees and administrative officers of each institution to pay for such purchases promptly in accordance with the contract of purchase. (1963, c. 448, s. 23.)

§ 115A-32. Audits of institutional accounts. — The State Auditor shall be responsible for conducting annually a thorough post audit of the receipts, expenditures, and fiscal transactions of each institution.

The annual audits shall be completed as near to the close of the fiscal year as practicable and copies of each audit shall be filed with the chairman of the board of trustees, the executive head of the institution, the county auditor of each county of the administrative area, the State Board of Education, and the Director of the Local Government Commission. (1963, c. 448, s. 23.)

§ 115A-33. Surety bonds. — The State Board of Education shall determine what State employees and employees of institutions shall give bonds for the protection of State funds and property and the Board is authorized to place the bonds and pay the premiums thereon from State funds.

The board of trustees of each institution shall require all institutional employees authorized to draw or approve checks or vouchers drawn on local funds, and all persons authorized or permitted to receive institutional funds from whatever source, and all persons responsible for or authorized to handle institutional property, to be bonded by a surety company authorized to do business in this State in such amount as the board of trustees deems sufficient for the protection of such property and funds. The tax-levying authority of each institution shall provide the funds necessary for the payment of the premiums of such bonds. (1963, c. 448, s. 23.)

§ 115A-34. Fire and casualty insurance on institutional buildings and contents. — (a) The board of trustees of each institution, in order to safeguard the investment in institutional buildings and their contents, shall

(1) Insure and keep insured each building owned by the institution to the extent of the current insurable value, as determined by the insured and insurer, against loss by fire, lightning, and the other perils embraced in extended coverage; and

(2) Insure and keep insured equipment and other contents of all institutional buildings that are the property of the institution or the State or which are used in the operation of the institution.

(b) The tax-levying authority of each institution shall provide the funds necessary for the purchase of the insurance required in (a) above.

(c) Boards of trustees may purchase insurance from companies duly licensed and authorized to sell insurance in this State or may obtain insurance in accordance with the provisions of Article 16, Chapter 115, of the General Statutes, "State Insurance of Public School Property." (1963, c. 448, s. 23.)

§ 115A-35. Liability insurance; tort actions against boards of trustees. — (a) Boards of trustees may purchase liability insurance only from companies duly licensed and authorized to sell insurance in this State. Each contract of insurance must by its terms adequately insure the board of trustees against any and all liability for any damages by reason of death or injury to person or property proximately caused by the negligence or torts of the agents and employees of such board of trustees or institution when acting within the scope of their authority or the course of their employment. Any company which enters into such a contract of insurance with a board of trustees by such act waives any defense based upon the governmental immunity of such board.

(b) Any person sustaining damages, or in case of death, his personal representative, may sue a board of trustees insured under this section for the recovery of such damages in any court of competent jurisdiction in this State, but only in a county of the administrative area of the institution against which the suit is brought; and it shall be no defense to any such action that the negligence or tort complained of was in pursuance of a governmental, municipal, or discretionary function of such board of trustees, to the extent that such board is insured as provided by this section.

(c) Nothing in this section shall be construed to deprive any board of trustees of any defense whatsoever to any action for damages, or to restrict, limit, or otherwise affect any such defense; and nothing in this section shall be construed to relieve any person sustaining damages or any personal representative of any decedent from any duty to give notice of such claim to the board of trustees or commence any civil action for the recovery of damages within the applicable period of time prescribed or limited by law.

(d) No part of the pleadings which relate to or allege facts as to a defendant's insurance against liability shall be read or mentioned in the presence of the trial jury in any action brought pursuant to this section. Liability shall not attach unless the plaintiff shall waive the right to have all issues of law and fact relating to insurance in such action determined by a jury, and such issues shall be heard and determined by the judge without resort to a jury and the jury shall be absent during any motions, arguments, testimony or announcements of findings of fact or conclusions of law with respect thereto, unless the defendant shall request jury trial thereon.

(e) The board of trustees of all institutions in this Chapter are authorized to pay as a necessary expense the lawful premiums of liability insurance provided in this section. (1963, c. 448, s. 23.)

Applied in Kiser v. Snyder, 17 N.C. App. 445, 194 S.E.2d 638 (1973); Kiser v. Snyder, 21 N.C. App. 708, 205 S.E.2d 619 (1974).

ARTICLE 5.

Special Provisions.

§ 115A-36. Authorization for transfer of State appropriations. — (a) Upon transferal of the administration and operation of industrial education centers from the State public school system to the provisions of this Chapter, and upon request from the State Board of Education, the Director of the Budget, with the approval of the Advisory Budget Commission, is authorized to transfer funds appropriated to the State Board of Education for the support of industrial education centers under the title of "Vocational Education" to appropriation accounts established for the support of the institutions provided in this Chapter.

(b) Upon transferal of the administration and operation of a community college from the provisions of Article 3, Chapter 116, of the General Statutes of North Carolina, to the provisions of this Chapter, and upon request of the State Board of Education, the Director of the Budget, with the approval of the Advisory Budget Commission, is authorized to transfer funds appropriated to the Department of Administration under the title of "Community Colleges" to appropriation accounts established for the support of the institutions provided in this Chapter. (1963, c. 448, s. 23.)

§ 115A-37. Multiple-county administrative areas. — Should two or more counties determine to form an administrative area for the purpose of establishing and supporting an institution, the boards of commissioners of all such counties shall jointly propose a contract to be submitted to the State Board of Education as part of the request for establishment of an institution. The contract shall provide, in terms consistent with this Chapter, for financial support of the institution, selection of trustees, termination of the contract and the administrative area, and any other necessary provisions. The State Board of Education shall have authority to approve the terms of the contract as a prerequisite for granting approval of the establishment of the institution and the administrative area. (1963, c. 448, s. 23.)

§ 115A-38. Special provisions for Central Piedmont Community College. — (a) As soon as practicable in accordance with the provisions of G.S. 115A-4, transferal shall be made of the administration and operation of Mecklenburg College and Charlotte Central Industrial Education Center from their respective administrative boards to a single board of trustees selected as provided in G.S. 115A-7(a). The two institutions shall thereafter constitute the Central Piedmont Community College, which shall be operated in accordance with the provisions of this Chapter as a single institution.

(b) The board of commissioners of Mecklenburg County is authorized to provide the local financial support for the Central Piedmont Community College as provided in G.S. 115A-19 by levying a special tax to a maximum annual rate equal to the maximum rate last approved by the voters of the county for the support of the Central Piedmont Community College as operated pursuant to Article 3, Chapter 116, of the General Statutes of North Carolina, or by appropriations from nontax revenues, or by both. The question of increasing the maximum annual rate may be submitted at an election held in accordance with the provisions of G.S. 115A-20(d) and the appropriate provisions of G.S. 115A-22.

(c) When, in the opinion of the board of trustees of said institution, the use of any building, building site, or other real property owned or held by said board is unnecessary or undesirable for the purposes of said institution, the board of trustees may sell, exchange, or lease such property in the same manner as is

provided by law for the sale, exchange, or lease of school property by county or city boards of education. The proceeds of any such sale or lease shall be used for capital outlay purposes. (1963, c. 448, s. 23; 1965, c. 402.)

§ 115A-38.1. Special provisions for Onslow County Technical Institute. — (a) The State Board of Education shall have authority to approve the conversion of the Onslow County Industrial Education Center to a technical institute, as defined in Chapter 115A of the General Statutes of North Carolina.

(b) All local taxes heretofore authorized by the voters of Onslow County to be levied annually for the local financial support of the Onslow County Industrial Education Center may continue to be levied by the board of commissioners of Onslow County for the purpose of providing local financial support of the institution as a technical institute.

(c) The Onslow County board of education is authorized to transfer without compensation to the board of trustees of the Onslow County Industrial Education Center the title to any real and personal property held by the board of education as the two boards may agree upon, either before or after the institution is converted to a technical institute.

(d) In the event that the State Board of Education shall approve the conversion of the Onslow County Industrial Education Center to a technical institute, within 60 days after the Board grants final approval, the Governor shall appoint four additional members to the board of trustees of the Onslow County Technical Institute in accordance with the provisions of G.S. 115A-7 and 115A-8(1) of the General Statutes of North Carolina. (1967, c. 279.)

ARTICLE 6.

Textile Training School.

§ 115A-39. Creation of board of trustees; members and terms of office; no compensation. — The affairs of the North Carolina Vocational Textile School shall be managed by a board of trustees composed of nine members, who shall be appointed by the Governor, and the State Director of Vocational Education as ex officio member thereof. The terms of office of the trustees appointed by the Governor shall be as follows: Two of said trustees shall be appointed for a term of two years; two for three years; and two for four years. At the expiration of such terms, the appointments shall be made for periods of four years. In the event of any vacancy on said boards, the vacancy shall be filled by appointment by the Governor for the unexpired term of the member causing such vacancy. The members of the said board of trustees appointed by the Governor shall serve without compensation. The reenactment of this section shall not have the effect of vacating the appointment or changing the terms of any of the members of said board of trustees heretofore appointed. (1955, c. 1372, art. 27, s. 1; 1963, c. 448, s. 30; 1969, c. 479.)

State Government Reorganization. — North Carolina Vocational Textile School was transferred to the Department of Public Education by § 143A-44, enacted by Session Laws 1971, c. 864.

§ 115A-40. Powers of board. — The said board of trustees shall hold all the property of the North Carolina Vocational Textile School and shall have the authority to direct and manage the affairs of said school, and within available appropriations therefor, appoint a managing head and such other officers, teachers and employees as shall be necessary for the proper conduct thereof. The board of trustees, on behalf of said school, shall have the right to accept and administer any and all gifts and donations from the United States government or from any other source which may be useful in carrying on the

affairs of said school. Provided, however, that the said board of trustees is not authorized to accept any such funds upon any condition that the said school shall be operated contrary to any provision of the Constitution or statutes of this State. (1955, c. 1372, art. 27, s. 2; 1963, c. 448, s. 30.)

§ 115A-41. Board vested with powers and authority of former boards. — The board of trustees acting under authority of this Article is vested with all the powers and authority of the board created under authority of Chapter 360 of the Public Laws of 1941, and the board created under authority of Chapter 806 of the Session Laws of 1945. (1955, c. 1372, art. 27, s. 3; 1963, c. 448, s. 30.)

§ 115A-42. Persons eligible to attend institution; subjects taught. — Persons eligible for attendance upon this institution shall be at least 16 years of age and legal residents of the State of North Carolina: Provided, that out-of-state students, not to exceed ten percent (10%) of the total enrollment, may be enrolled when vacancies exist, upon payment of tuition, the amount of tuition to be determined by the board of trustees. The money thus collected is to be deposited in the treasury of the North Carolina Vocational Textile School, to be used as needed in the operation of the school. The institution shall teach the general principles and practices of the textile manufacturing and related subjects. (1955, c. 1372, art. 27, s. 4; 1963, c. 448, s. 30.)

Chapter 116.

Higher Education.

Article 1.

The University of North Carolina.

Part 1. General Provisions.

Sec.
116-1. Purpose.
116-2. Definitions.
116-2.1. [Repealed.]

Part 2. Organization, Governance and Property of the University.

116-3. Incorporation and corporate powers.
116-4. Constituent institutions of the University of North Carolina.
116-4.1. [Repealed.]
116-5. Initial membership of Board of Governors.
116-6. Election and terms of members of Board of Governors.
116-7. General provisions concerning members of the Board of Governors.
116-8. Chairman, vice-chairman and secretary.
116-9. Meetings of Board of Governors.
116-10. Committees.
116-11. Powers and duties generally.
116-11.1. [Transferred.]
116-12. Property and obligations.
116-13. Powers of Board regarding property subject to general law.
116-14. President and staff.
116-15. Licensing of nonpublic educational institutions; regulation of degrees.
116-16. Tax exemption.
116-17. Purchase of annuity or retirement income contracts for faculty members, officers and employees.
116-18. Information Center established.
116-19. Contracts with private institutions to aid North Carolina students.
116-20. Scholarship and contract terms; base period.
116-21. Contract forms; reports; audits; regulations.
116-22. Definitions applicable to §§ 116-19 to 116-22.
116-22.1 to 116-26. [Transferred.]
116-27 to 116-29. [Repealed.]
116-30. [Transferred.]

Part 3. Constituent Institutions.

116-31. Membership of the boards of trustees.
116-32. Officers and meetings of the boards of trustees.
116-33. Powers and duties of the boards of trustees.
116-34. Duties of chancellor of institution.
116-35. Electric power plants, campus school, etc.
116-36. Endowment fund.
116-37. North Carolina Memorial Hospital board of directors; administration of hospital.
116-37.1. [Transferred.]
116-38. Child development research and demonstration center.
116-39. Agricultural research stations.
116-39.1, 116-39.2. [Repealed.]
116-40. Board to accept gifts and congressional donations.
116-40.1. Land scrip fund.
116-40.2. Authorization to purchase insurance in connection with construction and operation of nuclear reactors.
116-40.3. Participation in sixth-year program of graduate instruction for superintendents, assistant superintendents, and principals of public schools.
116-40.4. School of medicine authorized at East Carolina University; meeting requirements of accrediting agencies.
116-41. [Repealed.]

Part 4. Revenue Bonds for Service and Auxiliary Facilities.

116-41.1. Definitions.
116-41.2. Powers of Board of Governors generally.
116-41.3. University authorized to pay service charges; payments deemed revenues.
116-41.4. Bonds authorized; amount limited; form, execution and sale; terms and conditions; use of proceeds; additional bonds; interim receipts or temporary bonds; replacement of lost, etc., bonds; approval or consent for issuance; bonds not debt of State; bond anticipation notes.
116-41.5. Contents of resolution authorizing issuance; powers liberally construed; deposit and use of revenues; rights and remedies of bondholders; service charges; insurance of projects; depositaries.
116-41.6. Pledge of revenues; lien.
116-41.7. Proceeds of bonds, revenues, etc., deemed trust funds.
116-41.8. Rights and remedies of bondholders.
116-41.9. Refunding revenue bonds.
116-41.10. Exemption from taxation.
116-41.11. Executive committee may be authorized to exercise powers and functions of Board.

Sec.
116-41.12. Part provides supplemental and additional powers; compliance with other laws not required.

Part 5. Miscellaneous Provisions.

116-42 to 116-42.4. [Repealed.]
116-43. Escheat receipts prior to July 1, 1971.
116-44. [Repealed.]
116-44.1, 116-44.2. [Transferred.]

Part 6. Traffic and Parking.

116-44.3. Definitions.
116-44.4. Regulation of traffic and parking and registration of motor vehicles.
116-44.5. Special provisions applicable to identified constituent institutions of the University of North Carolina.
116-44.6 to 116-44.9. [Reserved.]

Article 1A.

Regional Universities.

116-44.10 to 116-44.16. [Repealed.]

Article 2.

Western Carolina University, East Carolina University, Appalachian State University, North Carolina Agricultural and Technical State University.

116-45 to 116-46. [Repealed.]
116-46.1 to 116-46.4. [Transferred.]

Article 3.

Community Colleges.

116-47. Short title.
116-48. Purpose.
116-49. Definitions.
116-50. Boards of trustees to govern colleges; composition; appointment, terms and qualifications of members; vacancies; election of officers.
116-51. Official title of board of trustees; name of college; powers generally.
116-52. Enumerated powers of board.
116-53. Appropriations by State.
116-54. Local appropriations or bond issues to supplement State appropriations.
116-55. Disposition of proceeds of local bond issue.
116-56. County taxes for maintenance of college; election on question of levying.
116-57. Election by college to come under Article; procedure.
116-58. Establishment of community college.
116-59. Board of Governors authorized to establish minimum standards.
116-60. Payment of expenses of special election under Article.
Sec.
116-61. Discontinuance as a community college.
116-62. Construction and effect of Article.
116-62.1. Motor vehicle laws applicable to streets, alleys and driveways on campus of Chowan College; college trustees authorized to adopt traffic regulations.

Article 4.

North Carolina School of the Arts.

116-63. Policy.
116-64. Establishment of school.
116-65. To be part of University of North Carolina; membership of Board of Trustees.
116-66. Powers of various boards.
116-67. Advisory board.
116-68. Endowment fund.
116-69. Purpose of school program.
116-70, 116-70.1. [Repealed.]

Article 5.

Loan Fund for Prospective College Teachers.

116-71. Purpose of Article.
116-72. Fund established.
116-73. Joint committee for administration of fund; rules and regulations.
116-74. Duration of fund; use of repaid loans and interest.

Articles 6-9.

[Repealed.]

116-75 to 116-104. [Repealed.]

Article 10.

State School for the Blind and the Deaf in Raleigh.

116-105 to 116-119. [Transferred.]

Article 11.

North Carolina School for the Deaf at Morganton.

116-120. [Transferred.]
116-121 to 116-124. [Repealed.]
116-124.1. [Transferred.]
116-125. [Transferred.]

Article 11A.

Eastern North Carolina School for the Deaf and North Carolina School for the Deaf at Morganton.

116-125.1 to 116-125.5. [Transferred.]

Article 12.

The Caswell School.

116-126 to 116-137. [Repealed.]

Article 13.

Colored Orphanage of North Carolina.

Sec.
116-138 to 116-142. [Transferred.]

Article 13A.

Negro Training School for Feebleminded Children.

116-142.1 to 116-142.10. [Repealed.]

Article 14.

General Provisions as to Tuition and Fees in Certain State Institutions.

116-143. State-supported institutions of higher education required to charge tuition and fees.
116-143.1. Definitions; military status provisions.
116-144. Higher fees from nonresidents may be charged.

Article 15.

Educational Advantages for Children of World War Veterans.

116-145 to 116-153. [Repealed.]

Article 16.

State Board of Higher Education.

116-154 to 116-157. [Repealed.]
116-158. Powers and duties generally.
116-158.1 to 116-158.4. [Transferred.]
116-159 to 116-167. [Repealed.]

Article 17.

College Revolving Fund.

116-168. Establishment, purpose and nature of fund; loans.
116-169. Terms of loans.
116-170. How loans secured and paid.

Article 18.

Scholarship Loan Fund for Prospective Teachers.

116-171. Establishment of fund.
116-172. Appropriations paid into fund; how administered.
116-173. Duration of fund; loans repaid and interest received added to fund and administered for same purposes.
116-174. Fund administered by State Superintendent of Public Instruction; rules and regulations.

Article 18A.

Contracts of Minors Borrowing for Higher Education; Scholarship Revocation.

116-174.1. Minors authorized to borrow for higher education; interest; requirements of loans.
Sec.
116-174.2. Grounds for revocation of scholarships.

Article 19.

Revenue Bonds for Student Housing.

116-175. Definitions.
116-176. Issuance of bonds.
116-177. Revenues for payment of bonds; rules for use of facilities.
116-178. Trust agreement.
116-179. Sale of bonds; functions performed by executive committee.
116-180. Moneys received deemed trust funds.
116-181. Remedies.
116-182. Refunding bonds.
116-183. Acceptance of grants; exemption from taxation.
116-184. Article cumulative.
116-185. Inconsistent laws declared inapplicable.

Article 20.

Motor Vehicles of Students.

116-186. [Transferred.]

Article 21.

Revenue Bonds for Student Housing, Student Activities, Physical Education and Recreation.

116-187. Purpose of Article.
116-188. Credit and taxing power of State not pledged; statement on face of bonds.
116-189. Definitions.
116-190. General powers of Board of Governors.
116-191. Issuance of bonds and bond anticipation notes.
116-192. Trust agreement; money received deemed trust funds; insurance; remedies.
116-193. Fixing fees, rents and charges; sinking fund.
116-194. Vesting powers in executive committee.
116-195. Refunding bonds.
116-196. Exemption from taxation; bonds eligible for investment or deposit.
116-197. Article provides additional and alternative method.
116-198. Inconsistent laws declared inapplicable.

Article 22.

Visiting Speakers at State-Supported Institutions.

116-199. Use of facilities for speaking purposes.
116-200. Enforcement of Article.

Article 23.

State Education Assistance Authority.

Sec.
116-201. Purpose and definitions.
116-202. Authority may buy and sell students' obligations; undertakings of Authority limited to revenues.
116-203. Authority created as subdivision of State; appointment, terms and removal of board of directors; officers; quorum; expenses and compensation of directors.
116-204. Powers of Authority.
116-205. Title to property; use of State lands; offices.
116-206. Acquisition of obligations.
116-207. Terms of acquisitions.
116-208. Construction of Article.
116-209. Trust fund established; use and investment of fund; duties of State Treasurer.
116-209.1. Provisions in conflict.
116-209.2. Reserves.
116-209.3. Additional powers.
116-209.4. Authority to issue bonds.
116-209.5. Bond resolution.
116-209.6. Revenues.
116-209.7. Trust funds.
116-209.8. Remedies.
116-209.9. Negotiability of bonds.
116-209.10. Bonds eligible for investment.
116-209.11. Additional pledge.
116-209.12. Credit of State not pledged.
116-209.13. Tax exemption.
116-209.14. Annual reports.
116-209.15. Merger of trust fund.
116-209.16. Other powers; criteria.
116-209.17. Establishment of student assistance program.
116-209.18. Powers of Authority to administer student assistance program.
116-209.19. Grants to students.
116-209.20. Public purpose.
116-209.21. Cooperation of the Board of Governors of the University of North Carolina.
116-209.22. Constitutional construction.
116-209.23. Inconsistent laws inapplicable.

Article 24.

Learning Institute of North Carolina.

116-210. State agencies and institutions may contract with Learning Institute; audits.
116-211. Contracts for operation of Advancement School authorized.

Article 25.

Disruption on Campuses of State-Owned Institutions of Higher Education.

116-212. Campus of state-supported institution of higher education subject to curfew.
116-213. Violation of curfew a misdemeanor; punishment.

ARTICLE 1.

The University of North Carolina.

Part 1. General Provisions.

§ 116-1. Purpose. — In order to foster the development of a well-planned and coordinated system of higher education, to improve the quality of education, to extend its benefits and to encourage an economical use of the State's resources, the University of North Carolina is hereby redefined in accordance with the provisions of this Article. (1971, c. 1244, s. 1.)

§ 116-2. Definitions. — As used in this Article, unless the context clearly indicates a contrary intent:

(1) "Board" means the Board of Governors of the University of North Carolina.

(2) "Board of trustees" means the board of trustees of a constituent institution.

(3) "Chancellor" means the chancellor of a constituent institution.
(4) "Constituent institution" or "institution" means one of the 16 public senior institutions, to wit, the University of North Carolina at Chapel Hill, North Carolina State University at Raleigh, the University of North Carolina at Greensboro, the University of North Carolina at Charlotte, the University of North Carolina at Asheville, the University of North Carolina at Wilmington, Appalachian State University, East Carolina University, Elizabeth City State University, Fayetteville State University, North Carolina Agricultural and Technical State University, North Carolina Central University, North Carolina School of the Arts, Pembroke State University, Western Carolina University, and Winston-Salem State University.
(5) "President" means the President of the University of North Carolina. (1971, c. 1244, s. 1.)

§ 116-2.1: Repealed by Session Laws 1971, c. 1244, s. 1.

Part 2. Organization, Governance and Property of the University.

§ 116-3. Incorporation and corporate powers. — The Board of Trustees of the University of North Carolina is hereby redesignated, effective July 1, 1972, as the "Board of Governors of the University of North Carolina." The Board of Governors of the University of North Carolina shall be known and distinguished by the name of "the University of North Carolina" and shall continue as a body politic and corporate and by that name shall have perpetual succession and a common seal. It shall be able and capable in law to take, demand, receive, and possess all moneys, goods, and chattels that shall be given for the use of the University, and to apply the same according to the will of the donors; and by gift, purchase, or devise to receive, possess, enjoy, and retain forever any and all real and personal estate and funds, of whatsoever kind, nature, or quality the same may be, in special trust and confidence that the same, or the profits thereof, shall be applied to and for the use and purpose of establishing and endowing the University, and shall have power to receive donations from any source whatever, to be exclusively devoted to the purposes of the maintenance of the University, or according to the terms of donation.

The corporation shall be able and capable in law to bargain, sell, grant, alien, or dispose of and convey and assure to the purchasers any and all such real and personal estate and funds as it may lawfully acquire when the condition of the grant to it or the will of the devisor does not forbid it; and shall be able and capable in law to sue and be sued in all courts whatsoever; and shall have power to open and receive subscriptions, and in general may do all such things as are usually done by bodies corporate and politic, or such as may be necessary for the promotion of learning and virtue. (1971, c. 1244, s. 1.)

Capacity to Take Devise. — See Brewer v. University of North Carolina, 110 N.C. 26, 14 S.E. 644 (1892), decided under former § 116-3, existing prior to the 1971 revision of this Part.

Power to Operate Water System. — The University of North Carolina as a body politic and corporate has authority to own, maintain, and operate a water system to provide services for itself and to any other person, firm, or corporation desiring such services outside the University. University of N.C. v. Town of Carrboro, 15 N.C. App. 501, 190 S.E.2d 231 (1972).

Discretionary Authority to Serve Nonresident Consumers. — The University of North Carolina is under no obligation to maintain a water system for the town or any person, firm, or corporation other than itself. A municipality which operates its own waterworks has the discretionary power to engage in this undertaking. When a municipality exercises this discretionary power, it does not assume the obligations of a public service corporation toward nonresident consumers. University of N.C. v. Town of Carrboro, 15 N.C. App. 501, 190 S.E.2d 231 (1972).

And to Set Different Rates for Services. — Having exercised its discretion to furnish water outside its corporate limits, the University of North Carolina has discretionary authority to set the rates which it will charge for such services, and it retains the authority to specify the terms upon which nonresidents may obtain its water. In exerting this authority, it may fix a different rate from that charged within the corporate limits. The defendant, having accepted these services for almost half a century is not now in a position to complain about the rates. University of N.C. v. Town of Carrboro, 15 N.C. App. 501, 190 S.E.2d 231 (1972).

§ 116-4. Constituent institutions of the University of North Carolina. — On July 1, 1972, the University of North Carolina shall be composed of the following institutions: the University of North Carolina at Chapel Hill, North Carolina State University at Raleigh, theUniversity of North Carolina at Greensboro, the University of North Carolina at Charlotte, the University of North Carolina at Asheville, the University of North Carolina at Wilmington, Appalachian State University, East Carolina University, Elizabeth City State University, Fayetteville State University, North Carolina Agricultural and Technical State University, North Carolina Central University, North Carolina School of the Arts, Pembroke State University, Western Carolina University and Winston-Salem State University. (1971, c. 1244, s. 1.)

§ 116-4.1: Repealed by Session Laws 1971, c. 1244, s. 1.

§ 116-5. Initial membership of Board of Governors. — (a) Commencing July 1, 1972, and continuing for the terms hereinafter stated and until their successors are chosen, the Board of Governors shall consist of the following members:

(1) Three persons elected prior to January 1, 1972, by and from the membership of the Board of Trustees of East Carolina University and two persons elected prior to January 1, 1972, by and from the membership of the board of trustees of each of the following institutions: Appalachian State University, North Carolina Agricultural and Technical State University, North Carolina Central University, and Western Carolina University.

(2) One person elected prior to January 1, 1972, by and from the membership of the board of trustees of each of the following institutions: Elizabeth City State University, Fayetteville State University, North Carolina School of the Arts, Pembroke State University, and Winston-Salem State University.

(3) Sixteen persons elected prior to January 1, 1972, by and from the membership of the Board of Trustees of the University of North Carolina.

(4) Two persons elected prior to January 1, 1972, by the Board of Higher Education from its eight members-at-large. These shall be nonvoting members whose term shall expire on June 30, 1973.

(b) Of the 16 persons elected by the Board of Trustees of the University of North Carolina, four shall serve a term ending on June 30, 1973, four shall serve a term ending on June 30, 1975, four shall serve a term ending on June 30, 1977, and four shall serve a term ending on June 30, 1979. On January 1, 1972, or as soon as practicable thereafter, those 16 persons shall by lot or other means acceptable to them determine which of them shall be assigned the terms ending in 1973, 1975, 1977, and 1979 respectively. Of the 11 persons elected by the boards of trustees of the institutions listed in G.S. 116-5(a)(1), three shall serve a term ending in 1973, three shall serve a term ending on June 30, 1975, three shall serve a term ending on June 30, 1977, and two shall serve a term ending on June 30, 1979. On January 1, 1972, or as soon as practicable thereafter, those 11 persons shall by lot or other means acceptable to them determine which of them shall be assigned the terms ending in 1973, 1975, 1977, and 1979 respectively. Of the five persons elected by the boards of trustees of the

institutions listed in G.S. 116-5(a)(2), the member elected from the Board of Trustees of the North Carolina School of the Arts shall serve a term ending on June 30, 1973, and of the remaining members, one shall serve a term ending on June 30, 1975, one shall serve a term ending on June 30, 1977, and two shall serve a term ending on June 30, 1979. On January 1, 1972, or as soon as practicable thereafter, those four persons, excluding the member from the North Carolina School of the Arts, shall by lot or other means acceptable to them determine which of them shall be assigned the terms ending in 1975, 1977, and 1979 respectively.

(c) Any vacancy occurring in the membership of the Board of Governors between July 1, 1972, and June 30, 1973, shall be filled by appointment of the Governor, and the person appointed shall serve for the remainder of the unexpired term.

(d) The Governor shall serve ex officio as a member and as chairman of the Board of Governors until December 31, 1972. (1971, c. 1244, s. 1.)

§ 116-6. Election and terms of members of Board of Governors. — (a) As the terms of members of the Board of Governors provided for in G.S. 116-5 expire, their successors shall be elected by the Senate and House of Representatives. Eight members shall be so elected at the regular legislative session in 1973 and every two years thereafter.

(b) All terms shall commence on July 1 of odd-numbered years and all members shall serve for eight-year overlapping terms.

(c) No member may be elected to more than two full terms in succession.

(d) The Senate and House of Representatives, in electing members of the Board of Governors, shall select from a slate of nominees made in a joint session of the General Assembly. There shall be nominated from the floor at least twice the number of persons as there are vacancies to be filled. The Senate and the House of Representatives shall elect one half of the persons necessary to fill the vacancies, with the Senate to hold its election prior to the House of Representatives. In the event that an odd number of members are to be elected, the House of Representatives shall select the additional nominee. In 1973 and every four years thereafter, the Senate shall elect at least one woman and one member of a minority race and the House of Representatives shall elect at least one member of the political party to which the largest minority of the members of the General Assembly belong. In 1975 and every four years thereafter, the Senate shall elect at least one member of the political party to which the largest minority of the members of the General Assembly belong and the House of Representatives shall elect at least one woman and one member of a minority race.

(e) Of the eight members elected every two years, at least one shall be a woman, at least one other member shall be a member of a minority race, and at least one other member shall be a member of the political party to which the largest minority of the members of the General Assembly belong. In subsequent elections to the Board, the General Assembly shall maintain at least these minimum proportions among the members of the Board. (1971, c. 1244, s. 1.)

§ 116-7. General provisions concerning members of the Board of Governors. — (a) All members of the Board of Governors shall be selected for their interest in, and their ability to contribute to the fulfillment of, the purposes of the Board of Governors, and all members shall be deemed members-at-large, charged with the responsibility of serving the best interests of the whole State. In electing members, the objective shall be to obtain the services of the best qualified citizens of the State, taking into consideration the need for representation on the Board by the different races, sexes and political parties.

(b) From and after July 1, 1973, no member of the General Assembly or officer or employee of the State or of any constituent institution or spouse of any such

member, officer or employee may be a member of the Board of Governors. Any member of the Board of Governors who is elected or appointed to the General Assembly or who becomes an officer or employee of the State or of any constituent institution or whose spouse is elected or appointed to the General Assembly or becomes such officer or employee shall be deemed thereupon to resign from his membership on the Board of Governors.

(c) Whenever any vacancy shall occur in the elected membership of the Board of Governors, it shall be the duty of the secretary of the Board to inform the General Assembly of the existence of the vacancy, and the General Assembly at its next regular session shall elect a person to fill the unexpired term. Whenever a member shall fail, for any reason other than ill health or service in the interest of the State or nation, to be present for four successive regular meetings of the Board, his place as a member shall be deemed vacant. (1971, c. 1244, s. 1.)

Generallly, if a Person Holds a Position with the State, Whether as an Employee or an Officer, He Is Prohibited from Serving on the Board of Governors. — See opinion of Attorney General to Honorable Robert W. Scott, Governor, 41 N.C.A.G. 623 (1971).

School Officials Are Not State Officers or Employees. — See opinion of Attorney General to Honorable Wm. Friday, President, University of North Carolina, Chapel Hill, 42 N.C.A.G. 239 (1973).

§ 116-8. Chairman, vice-chairman and secretary. — The Board of Governors shall elect from its membership for two-year terms, and until their successors have been elected and qualified, a chairman, a vice-chairman and a secretary. No person may serve as chairman more than four years in succession. (1971, c. 1244, s. 1.)

§ 116-9. Meetings of Board of Governors. — The Board of Governors shall meet at stated times established by the Board, but not less frequently than six times a year. A quorum for the conduct of business shall consist of a majority of the members. (1971, c. 1244, s. 1.)

§ 116-10. Committees. — The Board of Governors shall have power to appoint from its own number committees which shall be clothed with such powers as the Board of Governors may confer. No committee may reverse a decision concerning policy taken by the Board of Governors at a regular meeting. (1971, c. 1244, s. 1.)

§ 116-11. Powers and duties generally. — The powers and duties of the Board of Governors shall include the following:

(1) The Board of Governors shall plan and develop a coordinated system of higher education in North Carolina. To this end it shall govern the 16 constituent institutions, subject to the powers and responsibilities given in this Article to the boards of trustees of the institutions, and to this end it shall maintain close liaison with the State Board of Education, the Department of Community Colleges and the private colleges and universities of the State. The Board, in consultation with representatives of the State Board of Education and of the private colleges and universities, shall prepare and from time to time revise a long-range plan for a coordinated system of higher education, supplying copies thereof to the Governor, the members of the General Assembly, the Advisory Budget Commission and the institutions. Statewide federal or State programs that provide aid to institutions or students of post-secondary education through a State agency, except those related exclusively to the community college system, shall be administered by the Board pursuant to any requirement of State or

federal statute in order to insure that all activities are consonant with the State's long-range plan for higher education.

(2) The Board of Governors shall be responsible for the general determination, control, supervision, management and governance of all affairs of the constituent institutions. For this purpose the Board may adopt such policies and regulations as it may deem wise. Subject to applicable State law and to the terms and conditions of the instruments under which property is acquired, the Board of Governors may acquire, hold, convey or otherwise dispose of, invest and reinvest any and all real and personal property, with the exception of any property that may be held by trustees of institutional endowment funds under the provisions of G.S. 116-36 or that may be held, under authority delegated by the Board of Governors, either by a board of trustees or by trustees of any other endowment or trust fund.

(3) The Board shall determine the functions, educational activities and academic programs of the constituent institutions. The Board shall also determine the types of degrees to be awarded. The powers herein given to the Board shall not be restricted by any provision of law assigning specific functions or responsibilities to designated institutions, the powers herein given superseding any such provisions of law. The Board, after adequate notice and after affording the institutional board of trustees an opportunity to be heard, shall have authority to withdraw approval of any existing program if it appears that the program is unproductive, excessively costly or unnecessarily duplicative.

(4) The Board of Governors shall elect officers as provided in G.S. 116-14. Subject to the provisions of section 18 of this act [Sessions Laws 1971, Chapter 1244, section 18], the Board shall also elect, on nomination of the President, the chancellor of each of the constituent institutions and fix his compensation. The President shall make his nomination from a list of not fewer than two names recommended by the institutional board of trustees.

(5) The Board of Governors shall, on recommendation of the President and of the appropriate institutional chancellor, appoint and fix the compensation of all vice-chancellors, senior academic and administrative officers and persons having permanent tenure.

(6) The Board shall approve the establishment of any new publicly supported institution above the community college level.

(7) The Board shall set tuition and required fees at the institutions, not inconsistent with actions of the General Assembly.

(8) The Board shall set enrollment levels of the constituent institutions.

(9) a. The Board of Governors shall develop, prepare and present to the Governor, the Advisory Budget Commission and the General Assembly a single, unified recommended budget for all of public senior higher education. The recommendations shall consist of requests in three general categories: (i) funds for the continuing operation of each constituent institution, (ii) funds for salary increases for employees exempt from the State Personnel Act and (iii) funds requested without reference to constituent institutions, itemized as to priority and covering such areas as new programs and activities, expansions of programs and activities, increases in enrollments, increases to accommodate internal shifts and categories of persons served, capital improvements, improvements in levels of operation and increases to remedy deficiencies, as well as other areas.

b. Funds for the continuing operation of each constituent institution shall be appropriated directly to the institution. Funds for salary

increases for employees exempt from the State Personnel Act shall be appropriated to the board in a lump sum for allocation to the institutions. Funds for the third category in paragraph a of this subdivision shall be appropriated to the Board in a lump sum. The Board shall allocate to the institutions any funds appropriated, said allocation to be made in accordance with the Board's schedule of priorities; provided, however, that when both the Board and the Advisory Budget Commission deem it to be in the best interest of the State, funds in the third category may be allocated, in whole or in part, for other items within the list of priorities or for items not included in the list.

c. The Advisory Budget Commission may, on recommendation of the Board, authorize transfer of appropriated funds from one institution to another to provide adjustments for over- or under-enrollment or may make any other adjustments among institutions that would provide for the orderly and efficient operation of the institutions.

(10) The Board shall collect and disseminate data concerning higher education in the State. To this end it shall work cooperatively with the Department of Community Colleges and shall seek the assistance of the private colleges and universities. It may prescribe for the constituent institutions such uniform reporting practices and policies as it may deem desirable.

(11) The Board shall assess the contributions and needs of the private colleges and universities of the State and shall give advice and recommendations to the General Assembly to the end that the resources of these institutions may be utilized in the best interest of the State. All requests by private institutions of higher education for State assistance to the institutions or to students attending them shall be submitted first to the Board for review and recommendation before being presented to any other State agency or to the General Assembly.

(12) The Board shall give advice and recommendations concerning higher education to the Governor, the General Assembly, the Advisory Budget Commission and the boards of trustees of the institutions.

(13) The Board may delegate any part of its authority over the affairs of any institution to the board of trustees or, through the President, to the chancellor of the institution in any case where such delegation appears necessary or prudent to enable the institution to function in a proper and expeditious manner. Any delegation of authority may be rescinded by the Board at any time in whole or in part.

(14) The Board shall possess all powers not specifically given to institutional boards of trustees. (1971, c. 1244, s. 1.)

§ 116-11.1: Transferred to G.S. 116-37 by Session Laws 1971, c. 1244, s. 6.

§ 116-12. Property and obligations. — All property of whatsoever kind and all rights and privileges held by the Board of Higher Education and by the Boards of Trustees of Appalachian State University, East Carolina University, Elizabeth City State University, Fayetteville State University, North Carolina Agricultural and Technical State University, North Carolina Central University, North Carolina School of the Arts, Pembroke State University, Western Carolina University and Winston-Salem State University, as said property, rights and privileges may exist immediately prior to July 1, 1972, shall be, and hereby are, effective July 1, 1972, transferred to and vested in the Board of Governors of the University of North Carolina. All obligations of whatsoever kind of the Board of Higher Education and of the Boards of Trustees of Appalachian State University, East Carolina University, Elizabeth City State University,

Fayetteville State University, North Carolina Agricultural and Technical State University, North Carolina Central University, North Carolina School of the Arts, Pembroke State University, Western Carolina University and Winston-Salem State University, as said obligations may exist immediately prior to July 1, 1972, shall be, and the same hereby are, effective July 1, 1972, transferred to and assumed by the Board of Governors of the University of North Carolina. Any property, real or personal, held immediately prior to July 1, 1972, by a board of trustees of a constituent institution for the benefit of that institution or by the University of North Carolina for the benefit of any one or more of its six institutions, shall, from and after July 1, 1972, be kept separate and distinct from other property held by the Board of Governors, shall continue to be held for the benefit of the institution or institutions that were previously the beneficiaries and shall continue to be held subject to the provisions of the respective instruments, grants or other means or process by which any property right was acquired. In case a conflict arises as to which property, rights or privileges were held for the beneficial interest of a particular institution, or as to the extent to which such property, rights or privileges were so held, the Board of Governors shall determine the issue, and the determination of the Board shall constitute final administrative action. Nothing in this Article shall be deemed to increase or diminish the income, other revenue or specific property which is pledged, or otherwise hypothecated, for the security or liquidation of any obligations, it being the intent that the Board of Governors shall assume said obligations without thereby either enlarging or diminishing the rights of the holders thereof. (1971, c. 1244, s. 1.)

§ 116-13. Powers of Board regarding property subject to general law. — The power and authority granted to the Board of Governors with regard to the acquisition, operation, maintenance and disposition of real and personal property shall be subject to, and exercised in accordance with, the provisions of Chapters 143 and 146 of the General Statutes. (1971, c. 1244, s. 1.)

§ 116-14. President and staff. — (a) The Board shall elect a President of the University of North Carolina. He shall be the chief administrative officer of the University.

(b) The President shall be assisted by such professional staff members as may be deemed necessary to carry out the provisions of this Article, who shall be elected by the Board on nomination of the President. The Board shall fix the compensation of the staff members it elects. These staff members shall include a senior vice-president and such other vice-presidents and officers as may be deemed desirable. Provision shall be made for persons of high competence and strong professional experience in such areas as academic affairs, public service programs, business and financial affairs, institutional studies and long-range planning, student affairs, research, legal affairs, health affairs and institutional development, and for State and federal programs administered by the Board. In addition, the President shall be assisted by such other employees as may be needed to carry out the provisions of this Article, who shall be subject to the provisions of Chapter 126 of the General Statutes. The staff complement shall be established by the Board on recommendation of the President to insure that there are persons on the staff who have the professional competence and experience to carry out the duties assigned and to insure that there are persons on the staff who are familiar with the problems and capabilities of all of the principal types of institutions represented in the system.

(c) The President, with the approval of the Board, shall appoint an advisory committee composed of representative presidents of the private colleges and universities and may appoint such additional advisory committees as are deemed necessary or desirable. (1971, c. 1244, s. 1.)

§ 116-15. Licensing of nonpublic educational institutions; regulation of degrees. — (a) No nonpublic educational institution created or established in this State after April 15, 1923, by any person, firm, organization, or corporation shall have power or authority to confer degrees upon any person except as provided in this section. The Board of Governors shall call to the attention of the Attorney General, for such action as he may deem appropriate, any institution failing to comply with the requirements of this section.

(b) The Board of Governors, under such standards as it shall establish, may issue its license to confer degrees in such form as it may prescribe to a nonpublic educational institution established in this State after April 15, 1923, by any person, firm, organization, or corporation; but no nonpublic educational institution established in the State subsequent to that date shall be empowered to confer degrees unless it has income sufficient to maintain an adequate faculty and equipment sufficient to provide adequate means of instruction in the arts and sciences, or in any other recognized field or fields of learning or knowledge.

(c) All nonpublic educational institutions licensed under this section shall file such information with the President as the Board of Governors may direct, and the said Board may evaluate any nonpublic educational institution applying for a license to confer degrees under this section. If any such nonpublic educational institution shall fail to maintain the required standards, the Board shall revoke its license to confer degrees, subject to a right of review of this decision in the manner provided in Chapter 150[A] of the General Statutes.

(d) The State Board of Education shall have sole authority to administer and supervise, at the State level, the system of community colleges, technical institutes, and industrial education centers provided in Chapter 115A of the General Statutes, and shall regulate the granting of appropriate awards, two-year degrees, and marks of distinction by those institutions. (1971, c. 1244, s. 1; 1973, c. 1331, s. 3.)

Editor's Note. — Pursuant to Session Laws 1973, c. 1331, s. 3, effective July 1, 1975, the reference to Chapter 150[A] has been substituted for a reference to Article 33 of Chapter 143 in subsection (c).

§ 116-16. Tax exemption. — The lands and other property belonging to the University of North Carolina shall be exempt from all kinds of public taxation. (Const., art. 5, s. 5; 1789, c. 306, s. 3, P. R.; R. S., vol. 2, p. 428; Code, s. 2614; Rev., s. 4262; C. S., s. 5783; 1971, c. 1244, s. 2.)

§ 116-17. Purchase of annuity or retirement income contracts for faculty members, officers and employees. — Notwithstanding any provision of law relating to salaries and/or salary schedules for the pay of faculty members, administrative officers, or any other employees of universities, colleges and institutions of higher learning as named and set forth in this Article, and other State agencies qualified as educational institutions under section 501(c)(3) of the United States Internal Revenue Code, the governing boards of any such universities, colleges and institutions of higher learning may authorize the business officer or agent of same to enter into annual contracts with any of the faculty members, administrative officers and employees of said institutions of higher learning which provide for a reduction in salary below the total established compensation or salary schedule for a term of one year. The financial officer or agent shall use the funds derived from the reduction in the salary of the faculty member, administrative officer or employee to purchase a nonforfeitable annuity or retirement income contract for the benefit of said faculty member, administrative officer or employee of said universities, colleges and institutions of higher learning. A faculty member, administrative officer or employee who has agreed to a salary reduction for this purpose shall not have

the right to receive the amount of the salary reduction in cash or in any other way except the annuity or retirement income contract. Funds used for the purchase of an annuity or retirement income contract shall not be in lieu of any amount earned by the faculty member, administrative officer or employee before his election for a salary reduction has become effective. The agreement for salary reductions referred to herein shall be effected under any necessary regulations and procedures adopted by the various governing boards of the various institutions of higher learning and on forms prepared by said governing boards. Notwithstanding any other provision of this section or law, the amount by which the salary of any faculty member, administrative officer or employee is reduced pursuant to this section shall not be excluded, but shall be included, in computing and making payroll deductions for social security and retirement system purposes, and in computing and providing matching funds for retirement system purposes. (1965, c. 365; 1971, c. 1244, s. 3.)

Institution Determines the Seller of the Annuity or the Retirement Income Contract under This Statute. — See opinion of Attorney General to Mr. H.L. Ferguson, Jr., University of North Carolina at Greensboro, 42 N.C.A.G. 6 (1972).

§ 116-18. Information Center established. — The Board of Governors of the University of North Carolina, with the cooperation of other concerned organizations, shall establish, as a function of the Board, an Educational Opportunities Information Center to provide information and assistance to prospective college and university students and to the several institutions, both public and private, on matters regarding student admissions, transfers and enrollments. The public institutions shall cooperate with the Center by furnishing such nonconfidential information as may assist the Center in the performance of its duties. Similar cooperation shall be requested of the private institutions in the State.

An applicant for admission to an institution who is not offered admission may request that the institution send to the Center appropriate nonconfidential information concerning his application. The Center may, at its discretion and with permission of the applicant, direct the attention of the applicant to other institutions and the attention of other institutions to the applicant. The Center is authorized to conduct such studies and analyses of admissions, transfers and enrollments as may be deemed appropriate. (1971, c. 1086, s. 1; c. 1244, s. 4.)

§ 116-19. Contracts with private institutions to aid North Carolina students. — In order to encourage and assist private institutions to continue to educate North Carolina students, the Board of Governors of the University of North Carolina is hereby authorized to enter into contracts with the institutions under the terms of which an institution receiving any funds that may be appropriated pursuant to this section would agree that, during any fiscal year in which such funds were received, the institution would provide and administer scholarship funds for needy North Carolina students in an amount at least equal to the amount paid to the institution, pursuant to this section, during the fiscal year. Under the terms of the contracts the Board of Governors of the University of North Carolina would agree to pay to the institutions, subject to the availability of funds, a fixed sum of money for each North Carolina student enrolled at the institutions for the regular academic year, said sum to be determined by appropriations that might be made from time to time by the General Assembly pursuant to this section. Funds appropriated pursuant to this section shall be paid by the Department of Administration to an institution upon recommendation of the Board of Governors of the University of North Carolina and on certification of the institution showing the number of North Carolina

students enrolled at the institution as of October 1 of any year for which funds may be appropriated. (1971, c. 744, s. 1; c. 1244, s. 5.)

§ 116-20. Scholarship and contract terms; base period. — In order to encourage and assist private institutions to educate additional numbers of North Carolinians, the Board of Governors of the University of North Carolina is hereby authorized to enter into contracts within the institutions under the terms of which an institution receiving any funds that may be appropriated pursuant to this section would agree that, during any fiscal year in which such funds were received, the institution would provide and administer scholarship funds for needy North Carolina students in an amount at least equal to the amount paid to the institution, pursuant to this section, during the fiscal year. Under the terms of the contracts the Board of Governors of the University of North Carolina would agree to pay to the institutions, subject to the availability of funds, a fixed sum of money for each North Carolina student enrolled as of October 1 of any year for which appropriated funds may be available, over and above the number of North Carolina students enrolled in that institution as of October 1, 1970, which shall be the base date for the purpose of this calculation. Funds appropriated pursuant to this section shall be paid by the Department of Administration to an institution upon recommendation of the Board of Governors of the University of North Carolina and on certification of the institution showing the number of North Carolina students enrolled at the institution as of October 1 of any year for which funds may be appropriated over the number enrolled on the base date. In the event funds are appropriated for expenditure pursuant to this section and funds are also appropriated, for the same fiscal year, for expenditure pursuant to G.S. 116-19, students who are enrolled at an institution in excess of the number enrolled on the base date may be counted under this section for the purpose of calculating the amount to be paid to the institution, but the same students may not also be counted under G.S. 116-19, for the purpose of calculating payment to be made under that section. (1971, c. 744, s. 2; c. 1244, s. 5.)

§ 116-21. Contract forms; reports; audits; regulations. — The Board of Governors of the University of North Carolina is authorized to prescribe the form of the contracts to be executed under G.S. 116-19 and 116-20, to require of the institutions such reports, statements and audits as the Board may deem necessary or desirable in carrying out the purposes of G.S. 116-19 through 116-22 and to make any rules or regulations that will, in the opinion of the Board, help to achieve the purposes of G.S. 116-19 through 116-22. (1971, c. 744, s. 3; c. 1244, s. 5.)

§ 116-22. Definitions applicable to §§ 116-19 to 116-22. — As used in G.S. 116-19 through 116-22:

(1) "Institution" shall mean an educational institution located in this State that is not owned or operated by the State of North Carolina or by an agency or political subdivision of the State or by any combination thereof, that is accredited by the Southern Association of Colleges and Schools under the standards of the College Delegate Assembly of said Association and that is not a seminary, Bible school, Bible college or similar religious institution.

(2) "Student" shall mean a resident of North Carolina in accordance with definitions of residency that may from time to time be adopted by the Board of Governors of the University of North Carolina and published in the residency manual of said Board; and a person who has not received a bachelor's degree, or qualified therefor, and who is otherwise classified as an undergraduate under such regulations as the Board of Governors of the University of North Carolina may promulgate. The enrollment figures required by G.S. 116-19 through 116-22 shall be the

number of full-time equivalent students as computed under regulations prescribed by the Board of Governors of the University of North Carolina. (1971, c. 744, s. 4; c. 1244, s. 5.)

§ 116-22.1: Transferred to G.S. 116A-3 by Session Laws 1971, c. 1135, s. 2.

§ 116-23: Transferred to G.S. 116A-4 by Session Laws 1971, c. 1135, s. 2.

§ 116-23.1: Transferred to G.S. 116A-5 by Session Laws 1971, c. 1135, s. 2.

§ 116-24: Transferred to G.S. 116A-6 by Session Laws 1971, c. 1135, s. 2.

§ 116-25: Transferred to G.S. 116A-7 by Session Laws 1971, c. 1135, s. 2.

§ 116-26: Transferred to G.S. 116-43 by Session Laws 1971, c. 1244, s. 17.

§ 116-27: Repealed by Session Laws 1971, c. 1244, s. 1.

§§ 116-28, 116-29: Repealed by Session Laws 1963, c. 448, s. 7.

§ 116-30: Transferred to G.S. 116-40 by Session Laws 1971, c. 1244, s. 9.

Part 3. Constituent Institutions.

§ 116-31. Membership of the boards of trustees. — (a) All persons who, as of June 30, 1972, are serving as trustees of the regional universities and of the North Carolina School of the Arts, except those who may have been elected to the Board of Governors, shall continue to serve for one year beginning July 1, 1972, and the terms of all such trustees shall continue for the period of one year.

(b) Effective July 1, 1972, a separate board of trustees shall be created for each of the following institutions: North Carolina State University at Raleigh, the University of North Carolina at Asheville, the University of North Carolina at Chapel Hill, the University of North Carolina at Charlotte, the University of North Carolina at Greensboro, and the University of North Carolina at Wilmington. For the period commencing July 1, 1972, and ending June 30, 1973, each such board shall be constituted as follows:

(1) Twelve or more persons elected prior to July 1, 1972, by and from the membership of the Board of Trustees of the University of North Carolina, and

(2) The president of the student government of the institution, ex officio.

(c) If any vacancy should occur in any board of trustees during the year beginning July 1, 1972, the Governor may appoint a person to serve for the balance of the year.

(d) Effective July 1, 1973, each of the 16 constituent institutions shall have board of trustees composed of 13 persons chosen as follows:

(1) Eight elected by the Board of Governors,

(2) Four appointed by the Governor, and

(3) The president of the student government ex officio.

(e) From and after July 1, 1973, the term of office of all trustees, except the ex officio member, shall be four years, commencing on July 1 of odd-numbered years. In every odd-numbered year the Board of Governors shall elect four persons to each board of trustees and the Governor shall appoint two persons to each such board.

(f) In electing boards of trustees to serve commencing July 1, 1973, the Board of Governors shall designate four persons for four-year terms and four for two-year terms. The Governor, in making appointments of trustees to serve commencing July 1, 1973, shall designate two persons for four-year terms and two for two-year terms.

(g) From and after July 1, 1973, any person who has served two full four-year terms in succession as a member of a board of trustees shall, for a period of one year, be ineligible for election or appointment to the same board but may be elected or appointed to the board of another institution.

(h) From and after July 1, 1973, no member of the General Assembly or officer or employee of the State or of any constituent institution or spouse of any such member, officer or employee shall be eligible for election or appointment as a trustee. Any trustee who is elected or appointed to the General Assembly or who becomes an officer or employee of the State or of any constituent institution or whose spouse is elected or appointed to the General Assembly or becomes such officer or employee shall be deemed thereupon to resign from his membership on the board of trustees.

(i) No person may serve simultaneously as a member of a board of trustees and as a member of the Board of Governors. Any trustee who is elected or appointed to the Board of Governors shall be deemed to resign as a trustee effective as of the date that his term commences as a member of the Board of Governors.

(j) From and after July 1, 1973, whenever any vacancy shall occur in the membership of a board of trustees among those appointed by the Governor, it shall be the duty of the secretary of the board to inform the Governor of the existence of such vacancy, and the Governor shall appoint a person to fill the unexpired term, and whenever any vacancy shall occur among those elected by the Board of Governors, it shall be the duty of the secretary of the board to inform the Board of Governors of the existence of the vacancy, and the Board of Governors shall elect a person to fill the unexpired term. Whenever a member shall fail, for any reason other than ill health or service in the interest of the State or nation, to be present for three successive regular meetings of a board of trustees, his place as a member shall be deemed vacant. (1971, c. 1244, s. 1.)

§ 116-32. Officers and meetings of the boards of trustees. — At the first meeting after June 30 of each year each board of trustees shall elect from its membership a chairman, a vice-chairman and a secretary. Each board of trustees shall hold not less than three regular meetings a year and may hold such additional meetings as may be deemed desirable. (1971, c. 1244, s. 1.)

§ 116-33. Powers and duties of the boards of trustees. — Each board of trustees shall promote the sound development of the institution within the functions prescribed for it, helping it to serve the State in a way that will complement the activities of the other institutions and aiding it to perform at a high level of excellence in every area of endeavor. Each board shall serve as advisor to the Board of Governors on matters pertaining to the institution and shall also serve as advisor to the chancellor concerning the management and development of the institution. The powers and duties of each board of trustees, not inconsistent with other provisions of this Article, shall be defined and delegated by the Board of Governors. (1971, c. 1244, s. 1.)

§ 116-34. Duties of chancellor of institution. — (a) The chancellor shall be the administrative and executive head of the institution and shall exercise complete executive authority therein, subject to the direction of the President. He shall be responsible for carrying out policies of the Board of Governors and of the board of trustees. As of June 30 of each year he shall prepare for the Board of Governors and for the board of trustees a detailed report on the operation of the institution for the preceding year.

(b) It shall be the duty of the chancellor to attend all meetings of the board of trustees and to be responsible for keeping the board of trustees fully informed on the operation of the institution and its needs.

(c) It shall be the duty of the chancellor to keep the President, and through him the Board of Governors, fully informed concerning the operations and needs

of the institution. Upon request, he shall be available to confer with the President or with the Board of Governors concerning matters that pertain to the institution.

(d) Subject to policies prescribed by the Board of Governors and by the board of trustees, the chancellor shall make recommendations for the appointment of personnel within the institution and for the development of educational programs. (1971, c. 1244, s. 1.)

§ 116-35. Electric power plants, campus school, etc. — Institutions operating electric power plants and distribution systems as of October 30, 1971, are authorized to continue such operation and, after furnishing power to the institution, to sell any excess current to the people of the community at a rate or rates approved by the Utilities Commission. Any net profits derived from the operation, or any proceeds derived from the lease or sale, of such power plants and distribution systems shall be paid into the permanent endowment fund held for the institution as provided for in G.S. 116-36. Institutions operating or authorized to operate, as of October 30, 1971, water or sewer distribution systems, may continue to do so. Each of the institutions now operating a campus laboratory or demonstration school may continue to do so under the presently existing plan of operation, consistent with the appropriations made therefor. The provisions of this section shall not apply to the University Enterprises of the University of North Carolina at Chapel Hill, which shall continue to be governed in all respects as provided in Chapters 634 and 723 of the Session Laws of 1971, G.S. 116-41.1 through 116-41.12, and other applicable legislation. (1971, c. 1244, s. 1.)

§ 116-36. Endowment fund. — (a) Each board of trustees is authorized to establish and maintain, pursuant to such terms and conditions as the Board of Governors of the University of North Carolina may from time to time prescribe, a permanent endowment fund for the institution.

(b) Such board of trustees may appoint an investment board to be known as "The Board of Trustees of the Endowment Fund of . . . . . ." (here shall be inserted the name of the institution), which board of trustees of the endowment fund is hereby created an agency of the Board of Governors of the University of North Carolina with the powers and duties prescribed in this section. The board of trustees of the endowment fund shall consist of five members, including the chairman of the board of trustees of the institution, the chancellor of the institution and three other persons, not necessarily members of the board of trustees of the institution, to be chosen by the board of trustees of the institution, subject to confirmation by the Board of Governors of the University of North Carolina. The three elected members shall serve for terms prescribed by the Board of Governors of the University of North Carolina.

(c) The chairman of the board of trustees of the institution shall also be the chairman of the board of trustees of the endowment fund.

(d) The trustees of said endowment fund may receive gifts, donations, and bequests, may in their discretion retain such in the form in which they are made, and may use the same as a permanent endowment fund. Said trustees may retain in such permanent endowment fund any other moneys or securities of any kind that may come to them from the Board of Governors of the University of North Carolina or that may come to the trustees of the endowment fund from any other source, excepting always the moneys received from State appropriations, and from tuition, fees, and the like, collected from students and used for the general operation of the institution. The trustees of the endowment fund shall have power to sell any property, real or personal, of the fund, at either public or private sale, and in doing so they shall not be subject to the provisions of Chapters 143 and 146 of the General Statutes.

(e) The trustees of the endowment fund shall be responsible for the prudent investment of the fund, in the exercise of their sound discretion, without regard to any statute or rule of law relating to the investment of funds by fiduciaries.

(f) The principal of said endowment fund shall be kept intact and only the income therefrom may be expended. The trustees of the endowment fund shall determine what is income and what is principal.

(g) It is not the intent that the income from such endowment fund shall take the place of State appropriations or any part thereof but that it shall supplement the State appropriations to the end that the institution may improve and increase its functions, may enlarge its areas of service and may become more useful to a greater number of people. All expenditures of moneys from the endowment fund shall in all cases be approved by the Board of Governors of the University of North Carolina, acting with the advice of the board of trustees of the institution, and expended under the direction of the Board of Governors. Funds from the endowment fund shall not be expended for a purpose which will impose a financial burden on the State of North Carolina without first securing the approval of the Advisory Budget Commission.

(h) The Board of Governors of the University of North Carolina shall establish standards for such scholarships as may be awarded from proceeds of said endowment fund and may change or alter such standards from time to time.

(i) Nothing in this section shall be construed to prevent the trustees of the endowment fund from receiving gifts, donations and bequests and from using the same for such lawful purposes as the donor or donors designate, subject always to the approval of the Board of Governors of the University of North Carolina, and subject, further, to the approval of the Advisory Budget Commission if the expenditure of funds would impose a financial burden on the State of North Carolina. (1971, c. 1244, s. 1.)

§ 116-37. North Carolina Memorial Hospital board of directors; administration of hospital. — (a) Composition. — The Board of Governors of the University of North Carolina is hereby directed to create a board of directors for the North Carolina Memorial Hospital consisting of 12 members of which nine shall be appointed by the consolidated University Governors. Three members ex officio of said board shall be the University of North Carolina Vice-Chancellor for Health Sciences, University of North Carolina Vice-Chancellor for Business and Finance, and the Dean of the University of North Carolina Medical School, or successors to these offices under other titles with similar responsibilities. Nine members shall be appointed from the business and professional public-at-large, none of whom shall be Governors of the University, and, thereafter, the nine appointive members shall select one of their number to serve as chairman. Members of this board shall include, but not be limited to, persons with special competence in business management, hospital administration, and medical practice not affiliated with University faculty. Four members shall be appointed for three-year terms and five members for five-year terms. All subsequent appointments shall be for five-year terms. Board member vacancies shall be filled by the Governors for the unexpired term. The Governors may remove any member for cause. Board members, other than ex officio members, shall each receive such per diem and necessary travel and subsistence expenses while engaged in the discharge of their official duties as is provided by law for members of State boards and commissions generally.

(b) Meetings and Powers of Board. — The board of directors shall meet at least every 60 days and may hold special meetings at any time and place within the State at the call of its chairman. The board of directors shall make rules, regulations, and policies governing the management and operation of the North Carolina Memorial Hospital, consistent with basic State statutes and procedures, to meet the goals of education, research, patient care, and community service. The board's action on matters within its jurisdiction are [is] final, except that

appeals may be made, in writing, to the Board of Governors with copy of appeal to the University administration. The board of directors shall elect and may remove the director of the hospital. The board of directors may enter into formal agreements with the University of North Carolina at Chapel Hill, Division of Health Sciences, with respect to the provision of clinical experience for students and may also enter into formal agreements with the University of North Carolina at Chapel Hill for the provision of maintenance and supporting services needed by the hospital.

(c) Director of Hospital. — The executive head of the North Carolina Memorial Hospital shall be the director of the hospital, who shall be appointed by the board of directors to serve at its pleasure. The director shall administer the affairs of the hospital subject to the duly adopted policies, rules, and regulations of the board of directors, including the appointment, promotion, demotion, and discharge of all hospital personnel. The director of the hospital shall report to the board of directors quarterly or more often as required. The director will serve as secretary to the board of directors.

(d) Hospital Personnel. — The hospital shall establish a personnel office for personnel administration independent of the central personnel office of the University of North Carolina at Chapel Hill.

(e) Hospital Finances. — The hospital shall be subject to the provision of the Executive Budget Act. There shall be established a hospital business and budget office to administer the budget and financial affairs of the hospital, independent of the central business and financial office of the University of North Carolina at Chapel Hill, except for cooperative reporting requirements. The director of the hospital, subject to the board of directors, shall be responsible for all aspects of budget preparation, budget execution, and expenditure reporting. Subject to the approval of the Advisory Budget Commission: All hospital operating funds may be budgeted and disbursed through a special fund code, all hospital receipts may be deposited directly to the special fund code; and general fund appropriations for hospital support may be budgeted in a general fund code under a single purpose, "Contribution to Hospital Operations" and be transferable to the special fund operating code as receipts.

(f) Hospital Purchases. — The hospital shall be subject to all provisions of Articles 3 and 3A of Chapter 143 of the General Statutes relating to the Department of Administration, Purchase and Contract Division. There shall be established a hospital purchasing office independent of the central purchasing office of the University of North Carolina at Chapel Hill to handle all purchasing requirements of the hospital. The Purchase and Contract Division may enter into such arrangements with the hospital board of directors as the Division may deem necessary in consideration of the special requirements of the hospital for procurement of certain supplies, materials, equipments and services.

(g) Hospital Property. — The hospital board of directors shall be responsible to the University Board of Governors for the maintenance, operation, and control of the hospital and its grounds. (1971, c. 762, s. 1; c. 1244, s. 6.)

§ 116-37.1: Transferred to G.S. 116-40.2 by Session Laws 1971, c. 1244, s. 10.

§ 116-38. Child development research and demonstration center. — (a) The Chapel Hill City Board of Education is authorized to enter into long-term agreements and contracts with the University of North Carolina for the purpose of providing for the establishment and operation of a child development research and demonstration center. The Board is additionally authorized to lease or transfer title to real and personal property, including buildings and equipment, with or without compensation, to the University for this purpose.

(b) If an elementary school meeting the requirements for accreditation established by the State Board of Education is operated in conjunction with the center such school shall receive financial support through the Chapel Hill City Board of Education from State, county, and administrative unit sources on the

same basis as the other elementary schools in the Chapel Hill city administrative unit.

(c) All personnel of the center whose salaries are paid in whole or part from funds administered by the State Board of Education or the Chapel Hill City Board of Education, from whatever sources derived, shall be employed only upon the mutual concurrence of the superintendent of the Chapel Hill city administrative unit and the director of the center. (1965, c. 690; 1971, c. 1244, s. 7.)

§ 116-39. Agricultural research stations. — The agricultural research stations shall be connected with North Carolina State University at Raleigh and shall be controlled by the Board of Governors of the University of North Carolina. (1907, c. 406, s. 12; C. S., s. 5825; 1963, c. 448, s. 9; 1965, c. 213; 1971, c. 1244, s. 8.)

§ 116-39.1, 116-39.2: Repealed by Session Laws 1971, c. 1244, s. 1.

§ 116-40. Board to accept gifts and congressional donations. — The Board of Governors shall use, as in its judgment may be proper, for the purposes of the University and for the benefit of education in agriculture and mechanic arts, as well as in furtherance of the powers and duties now or which may hereafter be conferred upon such Board by law, any funds, buildings, lands, laboratories, and other property which may be in its possession. The Board of Governors shall have power to accept and receive on the part of the State, property, personal, real or mixed, and any donations from the United States Congress to the several states and territories for the benefit of agricultural experiment stations or the agricultural and mechanical colleges in connection therewith, and shall expend the amount so received in accordance with the acts of the Congress in relation thereto. (1907, c. 406, s. 6; C. S., s. 5816; 1963, c. 448, s. 8; 1971, c. 1244, s. 9.)

§ 116-40.1. Land scrip fund. — The Board of Governors shall own and hold the certificates of indebtedness, amounting to one hundred and twenty-five thousand dollars ($125,000), issued for the principal of the land scrip fund, and the interest thereon shall be paid to them by the State Treasurer semiannually on the first day of July and January in each year for the purpose of aiding in the support of North Carolina State University at Raleigh in accordance with the act of the Congress approved July 2, 1862, entitled, "An act donating public lands to several states and territories which may provide colleges for the benefit of agriculture and mechanic arts." (1907, c. 406, s. 8; C. S., s. 5817; 1963, c. 448, s. 8; 1965, c. 213; 1971, c. 1244, s. 9.)

§ 116-40.2. Authorization to purchase insurance in connection with construction and operation of nuclear reactors. — In connection with the construction of, assembling of, use and operation of, any nuclear reactor now owned or hereafter acquired by it, North Carolina State University is hereby authorized and empowered to procure proper insurance against the hazards of explosion, implosion, radiation and any other special hazards unique to nuclear reactors, including nuclear fuel and all other components thereto. Further, North Carolina State University is authorized to enter into agreements with the United States Atomic Energy Commission prerequisite to licensing by that agency of nuclear reactors and to maintain as a part of such agreement or agreements appropriate insurance in amounts required by the Atomic Energy Commission of nuclear reactor licenses.

To the extent that North Carolina State University shall obtain insurance under the provisions of this section, it is hereby authorized and empowered to waive its governmental immunity from liability for damage to property or injury to [or] death to persons arising from the assembling, construction of, use and operation of nuclear reactors. Such immunity shall be deemed to have

been waived by the act of obtaining such insurance, but only to the extent that North Carolina State University is indemnified by such insurance.

Any contract of insurance purchased pursuant to this section must be issued by a company or corporation duly licensed and authorized to do a business of insurance in this State except to the extent that such insurance may be furnished by or through a governmental agency created for the purpose of insuring against such hazards or through reinsurance pools or associations established to insure against such hazards.

Any person sustaining property damage or personal injury may sue North Carolina State University for damages for injury arising out of the construction, assembly, use or operation of a nuclear reactor on the campus of the University in the Superior Court of Wake County, and to the extent that the University is indemnified by insurance, it shall be no defense to any such action that the University was engaged in the performance of a governmental or discretionary function of the University. In the case of death alleged to have been caused by the assembly, construction, use or operation of such nuclear reactor, the personal representative of the deceased person may bring such action.

Nothing in this section shall in any way affect any other actions which have been or may hereafter be brought under the Tort Claims Act against North Carolina State University, nor shall the provisions of this section in any way abrogate or replace the provisions of the Workmen's Compensation Act. (1969, c. 1023; 1971, c. 1244, s. 10.)

§ 116-40.3. Participation in sixth-year program of graduate instruction for superintendents, assistant superintendents, and principals of public schools. — Notwithstanding any other provision of law or the regulations of any administrative agency the educational institutions of East Carolina University, North Carolina Central University, North Carolina Agricultural and Technical State University, Appalachian State University, and Western Carolina University, are hereby authorized and shall be eligible colleges to participate in the sixth-year program adopted by the State Board of Education February 4, 1965, to provide a minimum of 60 semester hours of approved graduate, planned, nonduplicating instruction not beyond the master's degree for the education of superintendents, assistant superintendents, and principals of public schools. The satisfactory completion of such program and instruction shall qualify a person for the same certificate and stipend as now provided for other eligible educational institutions. (1965, c. 632; 1967, c. 1038; 1969, c. 114, s. 1; c. 608, s. 1; 1971, c. 1244, s. 10.)

§ 116-40.4. School of medicine authorized at East Carolina University; meeting requirements of accrediting agencies. — The Board of Trustees of East Carolina University is hereby authorized to create a school of medicine at East Carolina University, Greenville, North Carolina.

The school of medicine shall meet all requirements and regulations of the Council on Medical Education and Hospitals of the American Medical Association, the Association of American Medical Colleges, and other such accrediting agencies whose approval is normally required for the establishment and operation of a two-year medical school. (1965, c. 986, ss. 1, 2; 1967, c. 1038; 1971, c. 1244, s. 10.)

§ 116-41: Repealed by Session Laws 1963, c. 448, s. 15.

Part 4. Revenue Bonds for Service and Auxiliary Facilities.

§ 116-41.1. Definitions. — As used in this Part:

(1) "Board" means the Board of Governors of the University of North Carolina;

(2) "Construction" means acquisition, construction, provision, reconstruction, replacement, extension, improvement or betterment, or any combination thereof;

(3) "Cost," as applied to a project, shall include the cost of construction (as herein defined), the cost of all labor, materials and equipment, the cost of all lands, property, rights and easements acquired, financing charges, interest prior to and during construction and, if deemed advisable by the Board, for one year after completion of construction, cost of plans and specifications, surveys and estimates of cost and/or revenues, cost of engineering and legal services, and all other expenses necessary or incident to such construction, administrative expense and such other expenses, including reasonable provisions for initial operating expenses necessary or incident to the financing herein authorized and a reserve for debt service, and any expense incurred by the Board in the issuance of bonds under the provisions of this Part in connection with any of the foregoing items of cost;

(4) "Project" means any undertaking under this Part to acquire, construct or provide service and auxiliary facilities necessary or desirable for the proper and efficient operation of the University Enterprises, either as additions, extensions, improvements or betterments to the University Enterprises or otherwise, including one or more or any combination of any system, facility, plant, works, instrumentality or other property used or useful:

a. In obtaining, conserving, treating or distributing water for domestic, industrial, sanitation, fire protection or any other public or private use;

b. For the collection, treatment, purification or disposal of sewage, refuse or wastes;

c. For the production, generation, transmission or distribution of gas, electricity or heat;

d. In providing communication facilities including telephone facilities;

e. In providing storage, service, repair and duplicating facilities;

f. In improving, extending or adding to the University Enterprises as herein defined; and

g. In providing other service and auxiliary facilities serving the needs of the students, the staff or the physical plant of the University; and including all plants, works, appurtenances, machinery, equipment and properties, both personal and real, used or useful in connection therewith;

and in the case of the telephone, electric and water systems comprising a part of the University Enterprises such additions, extensions, improvements or betterments thereof as may be necessary or desirable, in the discretion of the Board, to provide service from such systems, where it may be reasonably made available, within the environs of the University, including, without limitation, areas presently served by the University Enterprises in Orange, Durham and Chatham Counties.

(5) "Revenue bonds" or "bonds" means bonds of the University issued by the Board to pay the cost, in whole or in part, of any project pursuant to this Part and the bond resolution or resolutions of the Board; provided, however, that bonds, issued as a separate series which are stated to mature not later than 20 years from their date may be designated "revenue notes" or "notes";

(6) "Revenues" means the income and receipts derived by or for the account of the University through the charging and collection of service charges;

(7) "Service charges" means rates, fees, rentals or other charges for, or for the right to, the use, occupancy, services or commodities of or furnished by any project, or by any other service or auxiliary facility of the University, including the University Enterprises, any part of the income of which is pledged to the payment of the bonds or the interest thereon;
(8) "University" means the body politic and corporate known and distinguished by the corporate name of the "University of North Carolina" under G.S. 116-3;
(9) "University Enterprises" means the following existing facilities, systems, properties, plants, works and instrumentalities located in or near the Town of Chapel Hill, North Carolina, presently in the jurisdiction of and operated by the University; the telephone, electric, heating and water systems, the laundry, Carolina Inn, service and repair shops, the duplicating shop, bookstores and student supply stores, and rental housing properties for faculty members. (1961, c. 1078, s. 1; 1963, c. 448, s. 16; c. 944, s. 1; 1965, c. 1033, s. 1; 1971, c. 636; c. 1244, s. 16.)

Cross Reference. — As to revenue bonds for student housing, see §§ 116-175 through 116-185.

Applied in State ex rel. Utilities Comm'n v. Chapel Hill Tel. Co., 12 N.C. App. 543, 183 S.E.2d 802 (1971).

§ 116-41.2. Powers of Board of Governors generally. — In addition to the powers which the Board now has, the Board shall have the following powers subject to the provisions of this Part and subject to agreements with the holders of any revenue bonds issued hereunder:
(1) To acquire by gift, purchase or the exercise of the power of eminent domain or to construct, provide, improve, maintain and operate any project or projects;
(2) To borrow money for the construction of any project or projects, and to issue revenue bonds therefor in the name of the University;
(3) To establish, maintain, revise, charge and collect such service charges (free of any control or regulation by any State regulatory body until January 1, 1973, and thereafter only by the North Carolina Utilities Commission) as will produce sufficient revenues to pay the principal of and interest on the bonds and otherwise to meet the requirements of the resolution or resolutions of the Board authorizing the issuance of the revenue bonds;
(4) To pledge to the payment of any bonds of the University issued hereunder and the interest thereon the revenues of the project financed in whole or in part with the proceeds of such bonds, and to pledge to the payment of such bonds and interest any other revenues, subject to any prior pledge or encumbrance thereof;
(5) To appropriate, apply, or expend in payment of the cost of the project the proceeds of the revenue bonds issued for the project;
(6) To sell, furnish, distribute, rent, or permit, as the case may be, the use, occupancy, services, facilities and commodities of or furnished by any project or any system, facility, plant, works, instrumentalities or properties whose revenues are pledged in whole or in part for the payment of the bonds, and to sell, exchange, transfer, assign or otherwise dispose of any project or any of the University Enterprises or any other service or auxiliary facility or any part of any thereof or interest therein determined by resolution of the Board not to be required for any public purpose by the Board;
(7) To insure the payment of service charges with respect to the telephone, electric and water systems of the University Enterprises, as the same

shall become due and payable, the Board may, in addition to any other remedies which it may have:

a. Require reasonable advance deposits to be made with it to be subject to application to the payment of delinquent service charges, and

b. At the expiration of 30 days after any such service charges become delinquent, discontinue supplying the services and facilities of such telephone, electric and water systems.

(8) To retain and employ consultants and other persons on a contract basis for rendering professional, technical or financial assistance and advice in undertaking and carrying out any project and in operating, repairing or maintaining any project or any system, facility, plant, works, instrumentalities or properties whose revenues are pledged in whole or in part for the payment of the bonds; and

(9) To enter into and carry out contracts with the United States of America or this State or any municipality, county or other public corporation and to lease property to or from any person, firm or corporation, private or public, in connection with exercising the powers vested under this Part. (1961, c. 1078, s. 2; 1971, c. 634, s. 2; c. 636; c. 1244, s. 15.)

The Utilities Commission did not have jurisdiction to enter a regulatory order applicable to the telephone company operated by the University of North Carolina at Chapel Hill. State ex rel. Utilities Comm'n v. Chapel Hill Tel. Co., 12 N.C. App. 543, 183 S.E.2d 802 (1971).

§ 116-41.3. University authorized to pay service charges; payments deemed revenues.—The University is hereby authorized to pay service charges for, or for the right to, the use, occupancy, services or commodities of or furnished by any project or by any other service or auxiliary facility of the University, including the University Enterprises, and the income and receipts derived from such service charges paid by the University shall be deemed to be revenues under the provisions of this Part and shall be applied and accounted for in the same manner as other revenues. (1961, c. 1078, s. 3.)

§ 116-41.4. Bonds authorized; amount limited; form, execution and sale; terms and conditions; use of proceeds; additional bonds; interim receipts or temporary bonds; replacement of lost, etc., bonds; approval or consent for issuance; bonds not debt of State; bond anticipation notes. — The Board is hereby authorized to issue, subject to the approval of the Advisory Budget Commission, at one time or from time to time, revenue bonds of the University for the purpose of undertaking and carrying out any project or projects hereunder; provided, however, that the aggregate principal amount of revenue bonds which the Board is authorized to issue under this section during the biennium ending June 30, 1969, shall not exceed three million five hundred thousand dollars ($3,500,000); provided, further, the Board shall have authority to issue revenue bonds under this section in an additional aggregate principal amount not to exceed three million five hundred thousand dollars ($3,500,000) during the biennium ending June 30, 1971; provided, however, that the aggregate principal amount of revenue bonds which the Board is authorized to issue under this section during the biennium ending June 30, 1973, shall not exceed thirteen million dollars ($13,000,000); provided, further, that the aggregate principal amount of revenue bonds which the Board is authorized to issue under this section during the biennium ending June 30, 1975, shall not exceed thirteen million dollars ($13,000,000). The bonds shall be dated, shall mature at such time or times not exceeding 30 years from their date or dates, and shall bear interest at such rate or rates as may be determined by the Board, and may be made redeemable before maturity at the option of the Board at such price or prices and under such terms and conditions as may be fixed by the Board

prior to the issuance of the bonds. The Board shall determine the form and manner of execution of the bonds, and any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the State. In case any officer whose signature or a facsimile of whose signature appears on any bonds or coupons shall cease to be such officer before the delivery of such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. Notwithstanding any of the other provisions of this Part or any recitals in any bonds issued under the provisions of this Part, all such bonds shall be deemed to be negotiable instruments under the laws of this State. The bonds may be issued in coupon or registered form or both, as the Board may determine, and provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest. The Board may sell such bonds in such manner, at public or private sale, and for such price, as it may determine to be for the best interests of the University.

The proceeds of the bonds of each issue shall be used solely for the purpose for which such bonds shall have been authorized and shall be disbursed in such manner and under such restrictions, if any, as the Board may provide in the resolution authorizing the issuance of such bonds. Unless otherwise provided in the authorizing resolution, if the proceeds of such bonds, by error of estimates or otherwise, shall be less than such cost, additional bonds may in like manner be issued to provide the amount of such deficit and shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the bonds first issued for the same purpose.

The resolution providing for the issuance of revenue bonds may also contain such limitations upon the issuance of additional revenue bonds as the Board may deem proper, and such additional bonds shall be issued under such restrictions and limitations as may be prescribed by such resolution.

Prior to the preparation of definitive bonds, the Board may, under like restrictions, issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery. The Board may also provide for the replacement of any bonds which shall become mutilated or be destroyed or lost.

Bonds may be issued by the Board under the provisions of this Part, subject to the approval of the Advisory Budget Commission, but without obtaining the consent of any other commission, board, bureau or agency of the State, and without any other proceedings or the happening of any other conditions or things than those consents, proceedings, conditions or things which are specifically required by this Part.

Revenue bonds issued under the provisions of this Part shall not be deemed to constitute a debt of the State of North Carolina or a pledge of the faith and credit of the State, but such bonds shall be payable solely from the funds herein provided therefor and a statement to that effect shall be recited on the face of the bonds.

The Board is hereby authorized to issue, subject to the approval of the Advisory Budget Commission, at one time or from time to time, revenue bond anticipation notes of the Board in anticipation of the issuance of bonds authorized pursuant to the provisions of this Part. The principal of and the interest on such notes shall be payable solely from the proceeds of bonds or renewal notes or, in the event bond or renewal note proceeds are not available, any available revenues of the project or projects for which such bonds shall have been authorized. The notes of each issue shall be dated, shall mature at such time or times not exceeding two years from their date or dates, shall bear

interest at such rate or rates as may be determined by the Board, and may be made redeemable before maturity, at the option of the Board, at such price or prices and under such terms and conditions as may be fixed by the Board, and may be made redeemable before maturity, at the option of the Board, at such price or prices and under such terms and conditions as may be fixed by the Board prior to the issuance of the notes. The Board shall determine the form and manner of execution of the notes, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the notes and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the State. In case any officer, whose signature or a facsimile of whose signature shall appear on any notes or coupons, shall cease to be such officer before the delivery of such notes, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. Notwithstanding any of the other provisions of this Part or any recitals in any notes issued under the provisions of this Part, all such notes shall be deemed to be negotiable instruments under the laws of this State. The notes may be issued in coupon or registered form or both, as the Board may determine, and provision may be made for the registration of any coupon notes as to principal alone and also as to both principal and interest, and for the reconversion into coupon notes of any notes registered as to both principal and interest. The Board may sell such notes in such manner, at public or private sale, and for such price, as it may determine to be for the best interests of the University.

The proceeds of the notes of each issue shall be used solely for the purpose for which the bonds in anticipation of which such notes are being issued shall have been authorized, and such note proceeds shall be disbursed in such manner and under such restrictions, if any, as the Board may provide in the resolution authorizing the issuance of such notes or bonds.

The resolution providing for the issuance of notes or bonds may also contain such limitations upon the issuance of additional notes as the Board may deem proper, and such additional notes shall be issued under such restrictions and limitations as may be prescribed by such resolution.

Notes may be issued by the Board under the provisions of this Part, subject to the approval of the Advisory Budget Commission, but without obtaining the consent of any other commission, board, bureau or agency of the State, and without any other proceedings or the happening of any other conditions or things than those consents, proceedings, conditions or things which are specifically required by this Part.

Revenue bond anticipation notes issued under the provisions of this Part shall not be deemed to constitute a debt of the State of North Carolina or a pledge of the faith and credit of the State, but such notes shall be payable solely from the funds herein provided therefor and a statement to that effect shall be recited on the face of the notes.

Unless the context shall otherwise indicate, the word "bonds," wherever used in this Part, shall be deemed and construed to include the words "bond anticipation notes." (1961, c. 1078, s. 4; 1963, c. 944, s. 2; 1965, c. 1033, s. 2; 1967, c. 724; 1969, c. 1236; 1971, c. 636; c. 1244, s. 15; 1973, c. 663.)

Editor's Note. — The 1973 amendment added to the first sentence the proviso relating to bonds issued during the biennium ending June 30, 1975, and added the last six paragraphs of the section.

§ 116-41.5. Contents of resolution authorizing issuance; powers liberally construed; deposit and use of revenues; rights and remedies of bondholders; service charges; insurance of projects; depositaries. — The Board in the resolution authorizing the issuance of bonds under this Part may provide for

a pledge to the payment of such revenue bonds and the interest thereon of the revenue derived from the project and also for a pledge of the revenues derived from any system, facility, plant, works, instrumentalities or properties improved, bettered, or extended by the project or otherwise within the jurisdiction of or operated by the University in connection with the University of North Carolina at Chapel Hill, North Carolina, the revenues derived from any future improvements, betterments or extensions of the project, the revenues derived from the University Enterprises, or any part thereof, or the revenues from the project and any or all of the revenues mentioned in this sentence, without regard to whether the operations involved are deemed governmental or proprietary, it being the purpose hereof to vest in the Board broad powers which shall be liberally construed. So long as any revenues of the University mentioned in this paragraph are pledged for the payment of the principal of or interest on any bonds issued hereunder, such revenues shall be deposited in a special fund and shall be applied and used only as provided in the resolution authorizing such bonds, subject, however, to any prior pledge or encumbrance thereof.

The resolution authorizing the issuance of the bonds may contain provisions for protecting and enforcing the rights and remedies of the holders of the bonds, including covenants setting forth the duties of the University in relation to the construction of any project to be financed with the proceeds of said bonds, and to the maintenance, repair, operation and insurance of such project or any other project, systems, facilities, plants, works, instrumentalities, properties, the University Enterprises or any part thereof, if the revenues thereof are in any way pledged as security for the bonds; the fixing and revising of service charges and the collection thereof; and the custody, safeguarding and application of all moneys of the University pertaining to the project and the bonds, and all revenues pledged therefor. Notwithstanding the provisions of any other law, the Board may carry insurance on any such project in such amounts and covering such risks as it may deem advisable. It shall be lawful for any bank or trust company incorporated under the laws of the State of North Carolina which may act as depositary of the proceeds of bonds or of revenues to furnish such indemnifying bonds or to pledge such securities as may be required by the Board. Such resolution may set forth the rights and remedies of the bondholders and may restrict the individual right of action by bondholders. Such resolution may contain such other provisions in addition to the foregoing as the Board may deem reasonable and proper for the security of the bondholders.

The Board may provide for the payment of the proceeds of the bonds and any revenues pledged therefor to such officer, board or depositary as it may designate for the custody thereof, and for the method of disbursement thereof, with such safeguards and restrictions as it may determine. All expenses incurred in carrying out the provisions of such resolution may be treated as a part of the cost of operation. (1961, c. 1078, s. 5; 1971, c. 1244, s. 15.)

§ 116-41.6. Pledge of revenues; lien. — All pledges of revenues under the provisions of this Part shall be valid and binding from the time such pledges are made. All such revenues so pledged shall immediately upon receipt thereof be subject to the lien of such pledge without any physical delivery thereof or further action, and the lien of such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the University, irrespective of whether such parties have notice thereof. (1961, c. 1078, s. 6.)

§ 116-41.7. Proceeds of bonds, revenues, etc., deemed trust funds. — The proceeds of all bonds issued and all revenues and other moneys received pursuant to the authority of this Part shall be deemed to be trust funds, to be held and applied solely as provided in this Part. The resolution authorizing the

issuance of bonds shall provide that any officer to whom, or bank, trust company or fiscal agent to which, such moneys shall be paid shall act as trustee of such moneys and shall hold and apply the same for the purposes hereof, subject to such regulations as such resolution may provide. (1961, c. 1078, s. 7.)

§ 116-41.8. Rights and remedies of bondholders. — Any holder of revenue bonds issued under the provisions of this Part or of any of the coupons appertaining thereto, except to the extent that the rights herein given may be restricted by the resolution authorizing the issuance of such bonds, may, either at law or in equity, by suit, action, mandamus or other proceeding, protect and enforce any and all rights under the laws of the State of North Carolina, including this Part, or under such resolution, and may enforce and compel the performance of all duties required by this Part or by such resolution to be performed by the University or by any officer thereof or the Board, including the fixing, charging and collecting of service charges. (1961, c. 1078, s. 8; 1971, c. 1244, s. 15.)

§ 116-41.9. Refunding revenue bonds. — The University is hereby authorized, subject to the approval of the Advisory Budget Commission, to issue from time to time refunding revenue bonds for the purpose of refunding any revenue bonds issued by the University under this Part in connection with any project or projects, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds. The University is further authorized, subject to the approval of the Advisory Budget Commission, to issue from time to time refunding revenue bonds for the combined purpose of

(1) Refunding any revenue bonds or refunding revenue bonds issued by the University in connection with any project or projects including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds, and

(2) Paying all or any part of the cost of any project or projects.

The issuance of such refunding revenue bonds, the maturities and other details thereof, the rights and remedies of the holders thereof, and the rights, powers, privileges, duties and obligations of the University with respect to the same, shall be governed by the foregoing provisions of this Part insofar as the same may be applicable. (1961, c. 1078, s. 9.)

§ 116-41.10. Exemption from taxation. — The bonds issued under the provisions of this Part and the income therefrom shall at all times be free from taxation within the State. (1961, c. 1078, s. 10.)

§ 116-41.11. Executive committee may be authorized to exercise powers and functions of Board. — The Board by resolution may authorize its executive committee to exercise or perform any of the powers or functions vested in the Board under this Part. (1961, c. 1078, s. 11; 1971, c. 1244, s. 15.)

§ 116-41.12. Part provides supplemental and additional powers; compliance with other laws not required. — This Part shall be deemed to provide an additional and alternative method for the doing of the things authorized hereby and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of or as repealing any powers now existing under any other law, either general, special or local; provided, however, that the issuance of revenue bonds or refunding revenue bonds under the provisions of this Part need not comply with the requirements of any other law applicable to the issuance of bonds and provided, further, that all general, special or local laws, or parts thereof, inconsistent herewith are hereby declared to be inapplicable to the provisions of this Part. (1961, c. 1078, s. 12.)

Part 5. Miscellaneous Provisions.

§§ 116-42 to 116-42.4: Repealed by Session Laws 1973, c. 495, s. 2.

Editor's Note. — Session Laws 1973, c. 495, ss. 3 and 5, provide: "Sec. 3. All ordinances, rules, and regulations adopted before the effective date of this act, under authority of G.S. 116-42, 116-42.1, 116-42.2, 116-42.3 and 116-42.4, as those sections read immediately before the effective date of this act, shall remain in full force and effect until altered pursuant to authority conferred by this act.

"Sec. 5. No action or proceeding of any nature (whether civil or criminal, judicial or administrative, or otherwise) pending at the effective date of this act is abated or otherwise affected by the adoption of this act."

Session Laws 1973, c. 495, s. 4, contains a severability clause.

§ 116-43. Escheat receipts prior to July 1, 1971. — All property that has heretofore escheated to the University of North Carolina, and all interest and earnings thereon, shall be set apart by the Board of Governors of the University for the six member campuses of the University of North Carolina as constituted on June 30, 1971, so that the interest and earnings from said fund shall be used for maintenance and/or for scholarships and loan funds for worthy and needy students, residents of the State, attending the member campuses of the University of North Carolina as constituted on June 30, 1971, under such rules and regulations as shall be adopted by the Board of Governors. (1874-5, c. 236, s. 2; Code, s. 2630; Rev., s. 4285; C. S., s. 5787; 1947, c. 614, s. 4; 1953, c. 1202, s. 3; 1971, c. 1244, s. 17.)

§ 116-44: Repealed by Session Laws 1971, c. 1244, s. 1.

§ 116-44.1: Transferred to G.S. 116-42 by Session Laws 1971, c. 1244, s. 11.

§ 116-44.2: Transferred to G.S. 116-38 by Session Laws 1971, c. 1244, s. 7.

Part 6. Traffic and Parking.

§ 116-44.3. Definitions. — Unless the context clearly requires another meaning, the following words and phrases have the meanings indicated when used in this Part:

(1) "Board of trustees" and "constituent institution" have the meanings assigned in G.S. 116-2.

(2) "Campus" means that University property, without regard to location, which is used wholly or partly for the purposes of a particular constituent institution of the University of North Carolina.

(3) "University" means a constituent institution as defined in G.S. 116-2.

(4) "University property" means property that is owned or leased in whole or in part by the State of North Carolina and which is subject to the general management and control of the Board of Governors of the University of North Carolina. (1973, c. 495, s. 1.)

Cross Reference. — See Editor's note to §§ 116-42 to 116-42.4.

Editor's Note. — Session Laws 1973, c. 495, s. 4, contains a severability clause.

§ 116-44.4. Regulation of traffic and parking and registration of motor vehicles. — (a) Except as otherwise provided in this Part, all of the provisions of Chapter 20 of the General Statutes relating to the use of highways of the State and the operation of motor vehicles thereon are applicable to all streets, alleys, driveways, parking lots, and parking structures on University property. Nothing in this section modifies any rights of ownership or control of University

property, now or hereafter vested in the Board of Governors of the University of North Carolina or the State of North Carolina.

(b) Each board of trustees may by ordinance prohibit, regulate, divert, control, and limit pedestrian or vehicular traffic and the parking of motor vehicles and other modes of conveyance on the campus. In fixing speed limits, the board of trustees is not subject to G.S. 20-141(f1) or (g2), but may fix any speed limit reasonable and safe under the circumstances as conclusively determined by the board of trustees. The board of trustees may not regulate traffic on streets open to the public as of right, except as specifically provided in this Part.

(c) Each board of trustees may by ordinance provide for the registration of motor vehicles maintained or operated on the campus by any student, faculty member, or employee of the University, and may fix fees for such registration. The ordinance may make it unlawful for any person to operate an unregistered motor vehicle on the campus when the vehicle is required by the ordinance to be registered.

(d) Each board of trustees may by ordinance set aside parking lots and other parking facilities on the campus for use by students, faculty, and employees of the University and members of the general public attending schools, conferences, or meetings at the University, visiting or making use of any University facilities, or attending to official business with the University. The board of trustees may issue permits to park in these lots and garages and may charge a fee therefor. The board of trustees may also by ordinance make it unlawful for any person to park a motor vehicle in any lot or other parking facility without procuring the requisite permit and displaying it on the vehicle.

(e) Each board of trustees may by ordinance set aside spaces in designated parking areas or facilities in which motor vehicles may be parked for specified periods of time. To regulate parking in such spaces, the board of trustees may install a system of parking meters and make it unlawful for any person to park a motor vehicle in a metered space without activating the meter for the entire time that the vehicle is parked, up to the maximum length of time allowed for that space. The meters may be activated by coins of the United States. The board of trustees may also install automatic gates, employ attendants, and use any other device or procedure to control access to and collect the fees for using its parking areas and facilities.

(f) The board of trustees may by ordinance provide for the issuance of stickers, decals, permits, or other indicia representing the registration status of vehicles or the eligibility of vehicles to park on the campus and may by ordinance prohibit the forgery, counterfeiting, unauthorized transfer, or unauthorized use of them.

(g) Violation of an ordinance adopted under any portion of this Part is a misdemeanor punishable by a fine of not more than fifty dollars ($50.00) or imprisonment for not more than 30 days, in the discretion of the court. An ordinance may provide that certain acts prohibited thereby shall not be enforced by criminal sanctions, and in such cases a person committing any such act shall not be guilty of a misdemeanor.

(h) An ordinance adopted under any portion of this Part may provide that violation subjects the offender to a civil penalty. Penalties may be graduated according to the seriousness of the offense or the number of prior offenses by the person charged. Each board of trustees may establish procedures for the collection of these penalties and they may be enforced by civil action in the nature of debt. The board of trustees may also provide for appropriate administrative sanctions if an offender does not pay a validly due penalty or upon repeated offenses. Appropriate administrative sanctions include, but are not limited to, revocation of parking permits, termination of vehicle registration, and termination or suspension of enrollment in or employment by the University.

(i) An ordinance adopted under any portion of this Part may provide that any vehicle illegally parked may be removed to a storage area. The cost of any such removal constitutes a lien on the vehicle that may be enforced in the manner provided by law for enforcement of mechanics' and materialmen's liens.

(j) Evidence that a motor vehicle was found parked or unattended in violation of an ordinance of the board of trustees is prima facie evidence that the vehicle was parked by:

(1) The person holding a University parking permit for the vehicle, or

(2) If no University parking permit has been issued for the vehicle, the person in whose name the vehicle is registered with the University pursuant to subsection (c), or

(3) If no University parking permit has been issued for the vehicle and the vehicle is not registered with the University, the person in whose name it is registered with the North Carolina Department of Motor Vehicles or the corresponding agency of another state or nation.

The rule of evidence established by this subsection applies only in civil, criminal, or administrative actions or proceedings concerning violations of ordinances of the board of trustees. G.S. 20-162.1 does not apply to such actions or proceedings.

(k) Each board of trustees shall cause to be posted appropriate notice to the public of applicable traffic and parking restrictions.

(l) All ordinances adopted under this Part shall be recorded in the minutes of the board of trustees and copies thereof shall be filed in the offices of the President of the University of North Carolina and the Secretary of State. Each board of trustees shall provide for printing and distributing copies of its traffic and parking ordinances.

(m) All moneys received pursuant to this Part shall be placed in a trust account in each constituent institution and may be used for any of the following purposes:

(1) To defray the cost of administering and enforcing ordinances adopted under this Part;

(2) To develop, maintain, and supervise parking areas and facilities;

(3) To provide bus service or other transportation systems and facilities, including payments to any public or private transportation system serving University students, faculty, or employees;

(4) As a pledge to secure revenue bonds for parking facilities issued under Article 21 of this Chapter;

(5) Other purposes related to parking, traffic, and transportation on the campus. (1973, c. 495, s. 1.)

Editor's Note. — The references to § 20-141(f1) and (g2) in subsection (b) are to subsections existing prior to the 1973 amendment of § 20-141.

§ 116-44.5. Special provisions applicable to identified constituent institutions of the University of North Carolina. — In addition to the powers granted by G.S. 116-42.1, the board of trustees of each of the constituent institutions enumerated hereinafter shall have the additional powers prescribed:

(1) The Board of Trustees of the University of North Carolina at Chapel Hill may by ordinance prohibit, regulate, and limit the parking of motor vehicles on those portions of the following public streets in the Town of Chapel Hill where parking is not prohibited by an ordinance of the Town of Chapel Hill:

a. Battle Lane;

b. Country Club Road, between Raleigh Street and South Road;

c. Manning Drive;

d. McCauley Street, between Columbia Street and Pittsboro Street;

e. Pittsboro Street, between South Columbia Street and Cameron Avenue;
f. Boundary Street, between Country Club Road and East Franklin Street;
g. Park Place, between Boundary Street and East Franklin Street;
h. South Columbia Street, between Franklin Street and Manning Drive;
i. Cameron Avenue, between South Columbia Street and Raleigh Street;
j. Raleigh Street;
k. Ridge Road;
l. South Road, between Columbia Street and Country Club Road.

In addition, the Board of Trustees of the University of North Carolina at Chapel Hill may regulate traffic on Cameron Avenue, between Raleigh Street and South Columbia Street, and on Raleigh Street, in any manner not inconsistent with ordinances of the Town of Chapel Hill.

(2) The Board of Trustees of Appalachian State University may by ordinance prohibit, regulate, and limit the parking of motor vehicles on those portions of the following public streets in the Town of Boone where parking is not prohibited by an ordinance of the Town of Boone:
a. Faculty Street, between U.S. 221-U.S. 321 (Hardin Street) and Water Street;
b. Stadium Drive, between Faculty Street and Fernclift Drive;
c. College Street, between U.S. 421-U.S. 321 (King Street) and Locust Street;
d. Appalachian Street, between Locust Street and Howard Street;
e. Brown Street, between Locust Street and Howard Street.

(3) The Board of Trustees of the University of North Carolina at Charlotte may by ordinance prohibit, regulate, and limit the parking of motor vehicles on those portions of the following public roads in the County of Mecklenburg where parking is not prohibited by ordinance or other source of legal regulation of the County of Mecklenburg or other governmental entity with jurisdiction to regulate parking on such public road:
a. Mary Alexander Boulevard (State Road No. 2834), between its intersection with N.C. Highway 49 and its intersection with Mallard Creek Church Road.

In addition, the Board of Trustees of the University of North Carolina at Charlotte may regulate traffic on Mary Alexander Boulevard (State Road No. 2834), between its intersection with N.C. Highway 49 and its intersection with Mallard Creek Church Road, in any manner not inconsistent with any ordinances or other sources of legal regulation of the County of Mecklenburg or other governmental entity with jurisdiction to regulate traffic on such public road.

(4) This section does not diminish the authority of any affected municipality, county or other governmental entity to prohibit parking on any public street or road listed herein. It is intended only to authorize the respective boards of trustees of the constituent institutions identified hereinabove to further prohibit, regulate, and limit parking on certain public streets and roads running through or adjacent to the campuses of the constituent institutions where parking is not prohibited by ordinance or other law of any affected municipality, county or other governmental entity. When an ordinance or other law of an affected municipality, county or other governmental entity is adopted to prohibit parking on any portion of any public street or road then regulated by an ordinance of a board of trustees, the ordinance of the board of

trustees is superseded and the University, upon request of the municipality, county or other governmental entity, shall immediately remove any signs, devices, or markings erected or placed by the University on that portion of the street or road pursuant to the superseded ordinance. (1973, c. 495, s. 1.)

Editor's Note. — Section 116-42.1, referred to in this section, was repealed by Session Laws 1973, c. 495, s. 2.

§§ 116-44.6 to 116-44.9: Reserved for future codification purposes.

ARTICLE 1A.

Regional Universities.

§§ 116-44.10 to 116-44.16: Repealed by Session Laws 1971, c. 1244, s. 1.

ARTICLE 2.

Western Carolina University, East Carolina University, Appalachian State University, North Carolina Agricultural and Technical State University.

§ 116-45: Repealed by Session Laws 1971, c. 1244, s. 1.

§ 116-45.1: Repealed by Session Laws 1969, c. 801, s. 7.

§ 116-45.2: Repealed by Session Laws 1969, c. 297, s. 6.

§ 116-46: Repealed by Session Laws 1971, c. 1244, s. 1.

§ 116-46.1: Transferred to G.S. 116-42.1 by Session Laws 1971, c. 1244, s. 11.

§ 116-46.1A: Transferred to G.S. 116-42.2 by Session Laws 1971, c. 1244, s. 11.

§ 116-46.1B: Transferred to G.S. 116-42.3 by Session Laws 1971, c. 1244, s. 11.

§ 116-46.2: Transferred to G.S. 116-17 by Session Laws 1971, c. 1244, s. 3.

§§ 116-46.3, 116-46.4: Transferred to G.S. 116-40.3 and 116-40.4 by Session Laws 1971, c. 1244, s. 10.

ARTICLE 3.

Community Colleges.

§ 116-47. Short title. — This Article shall be known as "The Community College Act." (1957, c. 1098, s. 1.)

Applied in Wynn v. Trustees of Charlotte Community College Sys., 255 N.C. 594, 122 S.E.2d 404 (1961).

§ 116-48. Purpose. — The purpose of this Article is to provide a plan of organization and operation for community colleges, to serve as a legislative

charter for such colleges, and to authorize the levy of taxes and issuance locally of bonds for the support thereof. Provided, no additional community colleges shall be organized or operated pursuant to the provisions of this Article after the effective date of Chapter 115A of the General Statutes of North Carolina, "Community Colleges, Technical Institutes, and Industrial Education Centers." (1957, c. 1098, s. 2; 1963, c. 448, s. 25.)

Editor's Note. — Chapter 115A of the General Statutes became effective July 1, 1963.

§ 116-49. Definitions. — As used herein:

(1) The term "community college" is defined to be an educational institution
   a. Dedicated primarily to the particular needs of a community or an area,
   b. Offering the freshman and sophomore courses of a college of arts and sciences and/or the first- or first- and second-year courses of a two-year technical institute of college grade, and
   c. Organized and operating under the provisions of this Article.

   In addition to the courses above referred to, such college may also offer a variety of occupational, vocational, avocational and recreational training programs. Such college may consist of one or more units operating within the boundaries of one county.

(2) The term "Board of Governors" refers to the Board of Governors of the University of North Carolina. (1957, c. 1098, s. 3; 1971, c. 1244, s. 14.)

System May Consist of More Than One Unit. — This section expressly authorizes a community college system to establish two units. Wynn v. Trustees of Charlotte Community College Sys., 255 N.C. 594, 122 S.E.2d 404 (1961).

At Different Locations. — A board of trustees has full authority to establish two community colleges in different locations and as separate units. Wynn v. Trustees of Charlotte Community College Sys., 255 N.C. 594, 122 S.E.2d 404 (1961).

§ 116-50. Boards of trustees to govern colleges; composition; appointment, terms and qualifications of members; vacancies; election of officers. — (a) Each community college shall be governed by a board of trustees consisting of 12 members, appointed as follows:

Two members by the governing board of the municipality in which the community college is located; provided, that, if the college is not located within the corporate limits of a municipality, then such appointment shall be by the governing board of the largest municipality, according to population, in the county in which the college is located.

Two members by the board of commissioners of the county in which the community college is located.

Two members by the board of education of the administrative school unit of the municipality in which, or partially in which, the community college is located; provided, that if the college is not located within the corporate limits of a municipality, then such appointment shall be by the board of education of the administrative school unit of the largest municipality, according to population, in the county in which the college is located, if there be such an administrative unit.

Two members by the board of education of the county in which the community college is located; provided, however, that it shall appoint four members if there is but one board of education for the county in which the college is located.

Four members by the Governor of North Carolina. Trustees appointed by the governing board of a city or by a city board of education shall be residents of

such municipality. Those appointed by a board of county commissioners, or by a county board of education shall be residents of the county (including the municipality) in which the college is located. Those appointed by the Governor shall be residents of the county (including the municipality) in which the college is located, or of a county contiguous thereto.

(b) Trustees shall be appointed for terms of six years, except that of the first board of trustees of each college appointed pursuant to this Article, each of the four members appointed by the city and/or county boards of education shall be appointed for a six-year term, each of the four members appointed by the governing board of the municipality and/or the board of commissioners of the county shall be appointed for a four-year term, and each of the four members appointed by the Governor shall be appointed for a two-year term, plus such additional months as to each appointee as shall be necessary in order for their respective terms to expire on June 30. After the first appointment of the first board of trustees of each college under this Article, all terms of all trustees shall commence on July 1. The authority appointing a particular member shall, in the event a vacancy occurs through the loss of such member as a trustee, appoint a member to fill the vacancy for the unexpired term.

(c) The trustees shall elect annually from among their number a chairman and a vice-chairman. They shall also elect a secretary and a treasurer who may, but need not be, trustees. One person may be elected to serve as both secretary and treasurer. The officers so elected shall each serve for one year or until their successors in office shall be duly elected. The meeting for the election of such officers shall be held not earlier than July 1 and not later than September 1 of each year. (1957, c. 1098, s. 4.)

§ 116-51. Official title of board of trustees; name of college; powers generally. — The board of trustees of each community college shall be known as "The Trustees of ....." filling in the name of the college; and such designation ("The Trustees of .....") shall constitute the official corporate name of the college. Such board shall be a body corporate, with all the powers usually conferred upon such bodies and necessary to enable it to acquire, hold and transfer property, make contracts, sue and be sued, and to exercise such other rights and privileges as may be necessary for the management and administration of the college, and for carrying out the provisions and purposes of this Article. (1957, c. 1098, s. 5.)

§ 116-52. Enumerated powers of board. — The trustees of each community college shall have authority, in the exercise of which they shall be subject to the provisions of Article 16, Chapter 116 of the General Statutes:

(1) To employ a president, dean or other chief administrative officer of the college upon such terms and conditions as the trustees shall fix and determine.

(2) To employ, or to delegate to the chief administrative officer the authority to employ subject to the approval of the trustees, all such other officers, teachers, instructors and employees as may be necessary for the operation of the college and to prescribe their titles and duties.

(3) To prescribe the curricula which shall be offered, and the certificates or degrees which shall be awarded upon satisfactory completion of any given course of study.

(4) To do all things necessary or proper to comply with any conditions which may be prescribed by the State of North Carolina or the United States of America in order to be eligible to receive moneys or other assistance appropriated or designated for the benefit of such institutions.

(5) To fix tuition, fees, and other charges for students attending or applying for attendance at the college.

(6) To prescribe and require the use of entrance examinations.

(7) To provide for an adequate system of accounting for all funds and property received, held, managed, expended or used by the college, and to require persons directly responsible for the handling of such funds to be adequately bonded.

(8) To purchase any land, easement or right-of-way which the trustees determine to be necessary for the proper operation of the college and, if the trustees of the college are unable to agree with the owners thereof for the purchase of such land, right-of-way or easement, to condemn same in the same manner and under the same procedure as is provided in Chapter 40 (Eminent Domain), Article 2 (Condemnation Proceedings), of the General Statutes of North Carolina. The determination of the trustees of the land necessary for such purpose shall be conclusive.

(9) To receive and accept private donations for such purposes and upon such terms as the donor may prescribe and which are consistent with the provisions of this Article.

(10) To utilize, pursuant to agreement with any local administrative school unit, any service, property or facilities of any such unit, and, in their discretion, to employ personnel jointly with any such unit on a cooperative, cost-sharing basis.

(11) To perform such other acts and do such other things as may be necessary or proper for the exercise of the foregoing specific powers, including the adoption and enforcement of all reasonable rules, regulations and bylaws for the government and operation of the college under this Article and for the discipline of students. (1957, c. 1098, s. 6.)

§ 116-53. Appropriations by State. — (a) Appropriations by the State of North Carolina as grants-in-aid to community colleges for operating expenses shall be paid on the basis of a specified sum per student quarter-hour of instruction delivered in a limited curriculum consisting of courses at the freshman and sophomore levels in liberal arts and sciences and in the first and second year offerings of technical institutes of college grade prescribed by the Board of Governors. The total annual amounts of these grants-in-aid to each college shall not, except when the Appropriation Act specifically provides otherwise, exceed the total of local public or private funds (exclusive of student fees and charges) made available annually to such college for operating expenses. Certification on forms prescribed by the Board of Governors shall be made to said Board and upon approval by said Board payments shall be made by the State disbursing officer to each community college in amounts not in excess of appropriations therefor.

(b) Appropriations by the State of North Carolina for capital or permanent improvements for community colleges shall, except when the Appropriation Act specifically provides otherwise, be on an equal matching fund basis, the moneys raised by a particular community college from public or private sources being matched by an equal amount of State funds, up to but not in excess of appropriations therefor. The sole purposes for which such appropriations may be expended shall be to acquire real property and to construct and equip classrooms, laboratories, administration offices, utility plants, libraries, cafeterias, physical education instructional facilities, and auditorium facilities, in such order of priority as the Board of Governors and the Advisory Budget Commission shall determine. Such appropriations shall not be expended for any other purpose, it being expressly intended that the construction of all other facilities and procurement of all other equipment shall be the sole obligation and responsibility of the community college.

Preliminary studies and cost estimates for the construction of all buildings or other capital improvements and proposals for the purchase of all original

equipment to be installed or used therein, involving the expenditure of State funds, shall be first submitted to and approved by the Board of Governors and the State Budget Bureau.

After approval by the Board of Governors and the Budget Bureau, payments shall be made by the State disbursing officer to the community college, within authorized appropriations, according to procedures established by the Budget Bureau. (1957, c. 1098, s. 7; 1961, c. 1099; 1971, c. 1244, s. 14.)

Editor's Note. — All of the functions, property, records, etc., of the Budget Bureau have been transferred by § 143-344 to the Department of Administration.

§ 116-54. Local appropriations or bond issues to supplement State appropriations. — When the State of North Carolina has made appropriations for the purpose of financing the cost of capital or permanent improvements for the benefit and use of one or more community colleges on such terms as shall require funds from other sources to supplement that part of said appropriations allocated to a particular community college and the amount of such funds available therefor is insufficient, the board of trustees of said community college may request the board of commissioners of the county in which said community college is situated to provide such funds. Upon receipt of such request said board of commissioners shall, within a reasonable time thereafter, proceed with providing sufficient funds either by appropriation in a manner consistent with the provisions of the County Fiscal Control Act or by issuance of bonds voted in an election called by said board of commissioners, or by both, as said board of commissioners may deem expedient. Any such bonds shall be issued pursuant to the County Finance Act, as amended, and shall be subject to the provisions of the Local Government Act. The board of commissioners shall not be required to call an election for the issuance of bonds for the benefit of a community college within two years after the date of the last preceding election for such purpose. The request to the board of commissioners shall specify the amount of funds required to be provided in order to match State appropriation: Provided, the board of trustees may at the same time request an amount in addition to the amount required to match State appropriation either for the same or for different purposes for which such State appropriation is made and may at any time request the board of commissioners may [to] proceed to provide funds to meet such requests for funds not required to match State appropriation by county appropriation or bond issue as hereinabove provided or may modify such request and proceed or may deny such request. Bonds may be authorized for such amount required to match State appropriation and for such additional amount by a single bond order or by separate bond orders in the discretion of the board of commissioners. (1957, c. 1098, s. 8.)

§ 116-55. Disposition of proceeds of local bond issue. — The proceeds of the sale of bonds issued by a county for a community college, after deducting therefrom the cost of preparing, issuing and marketing said bonds and the amount of any accrued interest and premium contained therein, may be turned over to the board of trustees of such community college, in which event no member of the board of commissioners of the county nor any county officer shall be liable for a penalty under the provisions of G.S. 153-107 with respect to the application of such proceeds. (1957, c. 1098, s. 9.)

Editor's Note. — Section 153-107, referred to above, was repealed by Session Laws 1973, c. 822. For present provisions as to counties, see Chapter 153A.

Taxpayer May Not Object Because Unit Racially Segregated. — Plaintiffs alleged that the use of bond proceeds for the construction of a unit of a community college system was for an illegal and unauthorized purpose on the ground that it would be operated as a racially segregated public college facility in violation of the Fourteenth Amendment of the U.S.

Constitution. Plaintiffs and all other property owners were subject to the ad valorem tax levied to provide funds for the payment of the bonds. No fact alleged indicated plaintiffs would be otherwise affected by the construction and operation of the college. Upon the facts alleged, no constitutional question may not be raised by one whose rights are not directly and certainly affected. Wynn v. Trustees of Charlotte Community College Sys., 255 N.C. 594, 122 S.E.2d 404 (1961).

Funds May Be Used for More Than One Unit. — The expenditure of public funds to provide necessary facilities and services at each of two units of a community college system is not an expenditure for an illegal or unauthorized purpose. Wynn v. Trustees of Charlotte Community College Sys., 255 N.C. 594, 122 S.E.2d 404 (1961).

§ 116-56. County taxes for maintenance of college; election on question of levying. — Notwithstanding any constitutional limitation or limitation provided by any general or special law, taxes may be levied by the board of commissioners of a county for the purpose of financing the cost of operation, equipment and maintenance of any community college situated within the boundaries of the county, and the special approval of the General Assembly is hereby given for the annual levying of taxes for such special purposes: Provided, that the levy of such special taxes shall be approved by the vote of a majority of the qualified voters of such county who shall vote on the question of levying such taxes in an election held for such purpose. The board of trustees may request the board of commissioners of the county to call an election, as hereinafter provided, upon the question of levying such taxes and shall specify in such request the maximum rate or amount of such taxes. Upon receipt of such request the board of commissioners of the county shall, within a reasonable time thereafter, submit the question of the authorization to levy such taxes at an election. The question of levying such taxes may be submitted at the same time as the question of issuance of bonds referred to in G.S. 116-54 is submitted, or such question may be submitted at a separate election. A ballot shall be furnished to each qualified voter at said election, which ballot may contain the words "For Community College maintenance tax (briefly stating any other pertinent information)," and "Against Community College maintenance tax, (briefly stating any other pertinent information)," with a square in front of each proposition, in one of each squares the voter may make a cross mark (X), but any other form of ballot containing adequate information and properly stating the question to be voted upon shall be construed as being in compliance with this Article. Such election may be held at the same time and in the same manner as elections held under Article 9, Chapter 153 of the General Statutes, the same being designated as the County Finance Act, beginning with G.S. 153-69 and sections following, or said election may be held at any time fixed by the board of commissioners of the county.

On or before the first day of May of each year the board of trustees shall notify the board of commissioners of the county of the amount of such taxes to be levied in such year and it shall be the duty of the board of commissioners of the county to levy such taxes accordingly. Such taxes shall be levied and collected in the same manner as other taxes of the county are levied and collected, and the collections thereof shall be turned over to the board of trustees by the end of each month. (1957, c. 1098, s. 10.)

Editor's Note. — Article 9, Chapter 153, referred to in the first paragraph, was repealed by Session Laws 1973, c. 822. For present provisions as to counties, see Chapter 153A.

§ 116-57. Election by college to come under Article; procedure. — Any college now or hereafter eligible, or desiring to become eligible, to receive the benefit of any direct appropriations of the State of North Carolina as a community college, and which desires to take advantage of such appropriations,

must first elect to come under the provisions of this Article. Such election shall be duly made by the governing board of the college and by such other group or body as may be necessary under the provisions of any charter or bylaws applicable to the college in question.

The resolutions of election to come under the provisions of this Article shall include appropriate resolutions:

(1) Electing to come under the provisions of this Article and to have this Article, as written and as subsequently amended, serve as the charter of said college in lieu of any existing charter or other authority under which the existing college is operated;

(2) Designating the name by which the community college shall be known;

(3) Providing for the transfer and conveyance of all assets owned or used by the existing college to the community college (authority is hereby given to any board of education, board of county commissioners or governing board of any municipality owning funds and properties so used to transfer and convey same to a community college in the county, without consideration, upon authorization of an annual tax levy for the maintenance of such college);

(4) Petitioning the State of North Carolina to approve it as a community college, and

(5) Providing that all such resolutions of election are adopted subject to approval of such institution by the State of North Carolina as a community college and subject to the authorization of an annual tax levy by a vote of the people of the county in which the college is located.

The petition of the college for approval, accompanied by a copy of all resolutions of election to come under the provisions of this Article, duly certified by the president or chairman of the governing board of the college and attested by the secretary, shall be submitted to the Board of Governors for approval. Written approval of the petition by the Board of Governors and the Advisory Budget Commission, and by the Attorney General as to form and legality, shall constitute approval by the State of North Carolina, subject to an authorization of an annual tax levy as aforesaid.

The petition for approval as a community college of any existing college which, prior to June 5, 1957, has received appropriations from State funds and is receiving public support from any county and/or municipal tax or nontax revenues may be approved, and may operate as a community college under this Article, without an authorization of an annual tax levy by a vote of the people of the county in which the college is located.

For good cause shown, the Board of Governors and the Advisory Budget Commission may approve the petition of the petitioning college without requiring the transfer of all funds and properties used by it to the community college, provided that the petitioner shall comply with such conditions as said Board and Commission may impose to assure the provision of adequate facilities for the community college. Following approval of the State of North Carolina as aforesaid, the board of commissioners of the county in which the college is located shall, within a reasonable time after receiving a request from the governing board of the college therefor, submit at an election the question of levying taxes to finance the operation, equipment and maintenance thereof. Such election shall be called and held in accordance with the provisions of G.S. 116-56.

If the governing board of the existing college shall submit to the Board of Governors within 18 months after the approval of the college by the State of North Carolina as aforesaid, a certificate of the result of such election showing approval of levying of taxes for the maintenance of the college as a community college, the Board of Governors shall, upon receipt thereof, file the resolutions of election, together with written approval thereof as aforesaid, and the certificate of the result of the election in the office of the Secretary of State.

From and after the filing of said documents in the office of the Secretary of State, said college shall be a community college under this Article; the existing governing board shall continue to act pending appointment of the first board of trustees under this Article; said existing board shall take all such action as shall be necessary and proper to transfer the funds and properties owned or used by the former institution to the new community college and to dissolve or otherwise terminate the former corporation, if such there be. From and after the organization of the new community college this Article shall serve as its charter. (1957, c. 1098, s. 11; 1971, c. 1244, s. 14.)

§ 116-58. Establishment of community college. — In any county not having a college supported by local public funds which would be eligible for establishment as a community college under this Article, the county board of education may petition the State of North Carolina for authority to establish a community college under this Article in said county. The petition shall be submitted to the Board of Governors and shall contain such information concerning the proposed location and plans for the financing and operation of the college as the Board of Governors may require. Written approval of the petition by the Board of Governors and the Advisory Budget Commission, and by the Attorney General as to form and legality, shall constitute approval by the State of North Carolina, subject to the authorization of an annual tax levy for the operation, equipment and maintenance of the proposed college by a vote of the people of the county in which the college is to be located. Following approval of the State of North Carolina as aforesaid, the board of commissioners of the county in which it is proposed that the college shall be located shall, within a reasonable time after receiving a request from the petitioning county board of education therefor, submit at an election the question of levying taxes to finance the operation, equipment and maintenance of such college. The election shall be called and held in accordance with the provisions of G.S. 116-56.

If, within 18 months after the approval of the petition by the State of North Carolina as aforesaid, the petitioning county board of education shall submit to the Board of Governors a certificate of the result of such election showing approval of the levying of taxes for the maintenance of the proposed community college, the Board of Governors shall file the petition, together with the written approval thereof as aforesaid, and the certificate of the result of the election in the office of the Secretary of State.

From and after the filing of said documents in the office of the Secretary of State, said proposed college shall be deemed chartered as a community college under this Article; provided, however, that unless and until appropriations shall be made by the State of North Carolina for the benefit of said college the trustees who would otherwise be appointed by the Governor of North Carolina, under G.S. 116-50(a), shall be appointed by the petitioning county board of education and their successors in office and shall all be residents of the county in which the college is located.

Approval of the petition by the State of North Carolina as aforesaid shall become null and void at the end of 18 months from the date of such approval if the election hereinabove provided for authorizing the levying of taxes for the maintenance of the community college shall not have been held and voted upon favorably within that time. (1957, c. 1098, s. 12; 1971, c. 1244, s. 14.)

§ 116-59. Board of Governors authorized to establish minimum standards. — The Board of Governors shall have authority to prescribe minimum standards with respect to student enrollment or prospective enrollment in academic courses, facilities, and other pertinent matters for approval as a community college under this Article. (1957, c. 1098, s. 13; 1971, c. 1244, s. 14.)

§ 116-60. Payment of expenses of special election under Article. — The cost of any special election held under authority of this Article shall be paid out of

the general fund of the county or, in the discretion of the board of commissioners of the county and with the concurrence of the board of education of the county, out of the school current expense fund of the county, and the authority to appropriate from school current expense fund for such cost is hereby given. (1957, c. 1098, s. 14.)

§ 116-61. Discontinuance as a community college. — A community college may, by appropriate resolutions of its trustees and of the board of commissioners of the county in which it is located, elect to discontinue its existence and operation as a community college under this Article as of the end of any regular school year; provided, however, that any community college which shall have accepted funds from the State of North Carolina for capital or permanent improvements shall, upon its discontinuance as a community college under this Article, pay to the State of North Carolina a sum equal to all appropriations made by the State to said college for capital or permanent improvements, less two and one-half percent (2½%) per annum from the date of payment of each such appropriation by the State to the date of such discontinuance as a community college; provided, further, that such payment may, for good cause, be waived in part or in toto by the Governor and the Advisory Budget Commission, acting jointly. If such payment, not being waived, is not made within 90 days after the discontinuance of the college as a community college under this Article, such failure to pay shall work an automatic forfeiture of all the assets and property of the college to the State of North Carolina. (1957, c. 1098, s. 15.)

§ 116-62. Construction and effect of Article. — This Article is in addition to and shall not be construed as superseding or repealing any prior act of the General Assembly establishing or authorizing the establishment of any college or the levy of taxes or the appropriation of local public funds for the support of any college. (1957, c. 1098, s. 17.)

§ 116-62.1. Motor vehicle laws applicable to streets, alleys and driveways on campus of Chowan College; college trustees authorized to adopt traffic regulations. — (a) All the provisions of Chapter 20 of the General Statutes relating to the use of the highways of the State and the operation of motor vehicles thereon are hereby made applicable to the streets, alleys and driveways on the campus of Chowan College. Any person violating any of the provisions of said Chapter in or on such streets, alleys or driveways on the campus of Chowan College shall, upon conviction thereof, be punished as therein prescribed. Nothing herein contained shall be construed as in any way interfering with the ownership and control of such streets, alleys and driveways on the campus of Chowan College as is now vested by law in the trustees of Chowan College or Town of Murfreesboro.

(b) The Board of Trustees of Chowan College is authorized to make such additional rules and regulations and adopt such additional ordinances with respect to the use of the streets, alleys, driveways, and to the establishment of parking areas on such campus not inconsistent with the provisions of Chapter 20, General Statutes of North Carolina, and the ordinances of the Town of Murfreesboro, as in its opinion may be necessary. All regulations and ordinances adopted pursuant to the authority of this subsection shall be recorded in the proceedings of the Board and printed, and copies of such regulations and ordinances shall be filed in the office of the Secretary of State of North Carolina. Any person violating any such regulations or ordinances shall, upon conviction thereof, be guilty of a misdemeanor, and shall be punishable by fine of not exceeding fifty dollars ($50.00) or imprisonment for not exceeding 30 days.

(c) The Board of Trustees of Chowan College shall cause to be posted at appropriate places on the campus of Chowan College notice to the public of applicable speed limits and parking laws and ordinances. (1965, c. 688.)

ARTICLE 4.

North Carolina School of the Arts.

§ 116-63. Policy. — It is hereby declared to be the policy of the State to foster, encourage and promote, and to provide assistance for, the cultural development of the citizens of North Carolina, and to this end the General Assembly does create and provide for a training center for instruction in the performing arts. (1963, c. 1116.)

§ 116-64. Establishment of school. — There is hereby established, and there shall be maintained, a school for the professional training of students having exceptional talent in the performing arts which shall be defined as an educational institution of the State, to serve the students of North Carolina and other states, particularly other states of the South. The school shall be designated the "North Carolina School of the Arts." (1963, c. 1116; 1971, c. 1244, s. 13.)

§ 116-65. To be part of University of North Carolina; membership of Board of Trustees. — The North Carolina School of the Arts is a part of the University of North Carolina and subject to the provisions of Article 1, Chapter 116, of the General Statutes; provided, however, that notwithstanding the provisions of G.S. 116-31, the Board of Trustees of said school shall consist of 14 persons, 13 of whom are selected in accordance with provisions of G.S. 116-31 and one of whom shall be the conductor of the North Carolina Symphony, who shall serve ex officio. (1963, c. 1116; 1971, c. 320, s. 4; c. 1244, s. 13.)

§ 116-66. Powers of various boards. — The Board of Governors of the University of North Carolina and the Board of Trustees of the school shall be advised and assisted by the State Board of Education and by the advisory board of the school. Entrance requirements shall be prescribed so that the professional training offered shall be available only to those students who possess exceptional talent in the performing arts. In developing curricula the school shall utilize, pursuant to agreement with institutions of higher education or with any local administrative school unit, existing facilities and such academic nonarts courses and programs of instruction as may be needed by the students of the school, and, in the discretion of the Board of Governors, personnel may be employed jointly with any such institution or unit on a cooperative, cost-sharing basis. Curricula below the collegiate level shall be developed with the advice and approval of the State Board of Education and in consultation with the advisory board of the school. The school shall confer and cooperate with the Southern Regional Education Board and with other regional and national organizations to obtain wide support and to establish the school as the center in the South for the professional training and performance of artists. The chancellor of the school shall preferably be a noted composer or dramatist. (1963, c. 1116; 1971, c. 1244, s. 13.)

§ 116-67. Advisory board. — An advisory board, to consist of at least 10 members who shall have achieved national, or international distinction as performers, playwrights, or composers, shall be appointed by the Governor, to serve for terms of eight years each; provided, that of the original advisory board, one third shall be appointed for terms of eight years, one third shall be appointed for terms of six years, and one third shall be appointed for terms of four years. The members of the advisory board shall be notified of all meetings of the Board of Trustees, and shall be invited to attend such meetings and to advise and counsel with the Board of Trustees, but the members of the advisory board shall not be entitled to vote. Vacancies arising on the said advisory board shall be filled by election of replacement members by the advisory board, with the approval of the Governor, for terms of eight years, or, if to fill a vacancy arising during

an unexpired term, for the remainder of the term of the vacating member. (1963, c. 1116.)

§ 116-68. Endowment fund. — The board of trustees is authorized to establish a permanent endowment fund, and shall perform such duties in relation thereto as are prescribed by the provisions of Article 1, Chapter 116, of the General Statutes. (1963, c. 1116; 1971, c. 1244, s. 13.)

§ 116-69. Purpose of school program. — The primary purpose of the school shall be the professional training, as distinguished from liberal arts instruction, of talented students in the fields of music, drama, the dance, and allied performing arts, at both the high school and college levels of instruction, with emphasis placed upon performance of the arts, and not upon academic studies of the arts. The said school may also offer high school and college instruction in academic subjects, and such other programs as are deemed necessary to meet the needs of its students and of the State, consistent with appropriations made and gifts received therefor, and may cooperate, if it chooses, with other schools which provide such courses of instruction. The school, on occasion, may accept elementary grade students of rare talent, and shall arrange for such students, in cooperation with an elementary school, a suitable educational program. (1963, c. 1116.)

§§ 116-70, 116-70.1: Repealed by Session Laws 1971, c. 1244, s. 13.

Article 5.

Loan Fund for Prospective College Teachers.

§ 116-71. Purpose of Article. — The purpose of this Article is to encourage, assist, and expedite the postgraduate-level education and training of competent teachers for the public and private universities, colleges and technical institutes in this State by the granting of loans to finance such study. The funds shall be used to increase the number of teaching faculty as distinguished from research specialists. (1965, c. 1148, s. 1.)

§ 116-72. Fund established. — There is established a loan fund for prospective college teachers to assist capable persons to pursue study and training leading to masters or doctorate degrees in preparation to become teachers in the public and private institutions of education beyond the high school in North Carolina. Both private and public sources may be solicited in the creation of the fund. (1965, c. 1148, s. 1.)

§ 116-73. Joint committee for administration of fund; rules and regulations. — "The Scholarship Loan Fund for Prospective College Teachers" shall be the responsibility of the Board of Governors of the University of North Carolina and the State Board of Education and will be administered by them through a joint committee, "The College Scholarship Loan Committee." This Committee will operate under the following rules and regulations and under such further rules and regulations as the Board of Governors of the University of North Carolina and the State Board of Education shall jointly promulgate.

(1) The nomination of applicants and recommendations of renewals shall be the responsibility of the College Scholarship Loan Committee.

(2) Loans should be made for a single academic year (nine months) with renewal possible for two successive years for students successfully pursuing masters or doctoral programs. Loans shall not exceed two thousand dollars ($2,000) for single students and three thousand dollars ($3,000) for married students.

(3) All scholarship loans shall be evidenced by notes, with sufficient sureties, made payable to the State Board of Education, and shall bear interest at the rate of four percent (4%) per annum from and after September 1 following the awarding of the candidate's degree.

(4) Recipients of loans may have them repaid by teaching in a college or other educational institution beyond the high school level in North Carolina upon completion of their masters or doctorate degree program, at the rate of one hundred dollars ($100.00) per month for each month of such teaching. If a student supported by a loan in this program should fail to so teach in a North Carolina institution, the loan would become repayable to the State, with interest, for that part of the teaching commitment not met, said note to be repaid according to the terms thereof.

(5) Loans for 12 weeks of summer study, carrying stipends not to exceed five hundred dollars ($500.00) for single and married students, should be available to students who do not plan to attend postgraduate school as full-time students during the regular academic year. Recipients should be eligible for up to three renewals over a four-year period. The obligation to teach in a North Carolina college or other educational institution, or failing that, to repay the State, shall apply proportionally as indicated above. (1965, c. 1148, s. 1; 1971, c. 1244, s. 14.)

§ 116-74. Duration of fund; use of repaid loans and interest. — The Scholarship Loan Fund for Prospective College Teachers shall continue in effect until terminated by action of the General Assembly of North Carolina. Such amounts of loans as shall be repaid from time to time under the provisions of this Article, together with such amounts of interest as may be received on account of loans made shall become a part of the principal amount of said loan fund. These funds shall be administered for the same purposes and under the same provisions as are set forth herein to the end that they may be utilized in addition to such further amounts as may be privately donated or appropriated from time to time by public or corporate bodies. (1965, c. 1148, s. 1.)

Articles 6-9.

[Repealed.]

§§ 116-75 to 116-104: Repealed by Session Laws 1957, c. 1142.

Article 10.

State School for the Blind and the Deaf in Raleigh.

§§ 116-105 to 116-119: Transferred to G.S. 115-321 to 115-335 by Session Laws 1963, c. 448, s. 28.

Article 11.

North Carolina School for the Deaf at Morganton.

§ 116-120: Transferred to G.S. 115-336 by Session Laws 1963, c. 448, s. 28.

§§ 116-121 to 116-124: Repealed by Session Laws 1963, c. 448, s. 28.

§ 116-124.1. Transferred to G.S. 115-342 by Session Laws 1963, c. 448, s. 28.

§ 116-125: Transferred to G.S. 115-343 by Session Laws 1963, c. 448, s. 28.

ARTICLE 11A.

Eastern North Carolina School for the Deaf and North Carolina School for the Deaf at Morganton.

§§ 116-125.1 to 116-125.5: Transferred to G.S. 115-337 to 115-341 by Session Laws 1963, c. 448, s. 28.

ARTICLE 12.

The Caswell School.

§§ 116-126 to 116-137: Repealed by Session Laws 1963, c. 1184, s. 7.

ARTICLE 13.

Colored Orphanage of North Carolina.

§§ 116-138 to 116-142: Transferred to G.S. 115-344 to 115-348 by Session Laws 1963, c. 448, s. 28.

ARTICLE 13A.

Negro Training School for Feebleminded Children.

§§ 116-142.1 to 116-142.10: Repealed by Session Laws 1963, c. 1184, s. 8.

ARTICLE 14.

General Provisions as to Tuition and Fees in Certain State Institutions.

§ 116-143. State-supported institutions of higher education required to charge tuition and fees. — The Board of Governors of the University of North Carolina shall fix the tuition and fees, not inconsistent with actions of the General Assembly, at the institutions enumerated in G.S. 116-4 in such amount or amounts as it may deem best, taking into consideration the nature of each institution and program of study and the cost of equipment and maintenance; and each institution shall charge and collect from each student, at the beginning of each semester or quarter, tuition, fees, and an amount sufficient to pay other expenses for the term.

In the event that said students are unable to pay the cost of tuition and required academic fees as the same may become due, in cash, the said several boards of trustees are hereby authorized and empowered, in their discretion, to accept the obligation of the student or students together with such collateral or security as they may deem necessary and proper, it being the purpose of this Article that all students in State institutions of higher learning shall be required to pay tuition, and that free tuition is hereby abolished.

Inasmuch as the giving of tuition and fee waivers, or especially reduced rates, represent in effect a variety of scholarship awards, the said practice is hereby prohibited except when expressly authorized by statute; and, furthermore, it is hereby directed and required that all budgeted funds expended for scholarships of any type must be clearly identified in budget reports.

Where an individual is participating in an interstate regional training program approved by the Southern Regional Education Board, or in the Appalachian Regional Commission program, or in the Coastal Plains Regional Commission program, or any other limiting federally funded program, or where an individual

is solicited for a special talent and is thereby awarded a scholarship, fellowship or assistantship, a special tuition rate not lower than the North Carolina resident rate may be granted in the discretion of the board of trustees of the institution. No special tuition rate may be granted to an individual serving exclusively as a faculty member on a part-time basis and who is enrolled at the same time as a part-time student; provided, however, that the Advisory Budget Commission is hereby authorized to modify this provision to alleviate justifiable budget difficulties in the affected institutions during the 1971-73 biennium.

Notwithstanding the above provision relating to the abolition of free tuition, the Board of Governors of the University of North Carolina may, in its discretion, provide regulations under which a full-time faculty member of the rank of full-time instructor or above, and any full-time staff member, may during the period of normal employment enroll for courses in their respective institutions free of charge for tuition, provided such enrollment does not interfere with normal employment obligations. (1933, c. 320, s. 1; 1939, cc. 178, 253; 1949, c. 586; 1961, c. 833, s. 16.1; 1963, c. 448, s. 27.1; 1965, c. 903; 1971, c. 845, ss. 6, 10; c. 1086, s. 2; c. 1244, s. 12; 1973, c. 116, s. 1.)

Editor's Note.—The 1973 amendment deleted the former second and third paragraphs, which were added by the second 1971 amendment and which required advance deposits, and the former fourth paragraph, also added by the second 1971 amendment, which required a nonrefundable fee upon application for admission.

Session Laws 1973, c. 116, s. 2, provides: "This act shall become effective upon its ratification and shall apply to terms beginning after May 1, 1973." The act was ratified on March 29, 1973.

Quoted in Swann v. Charlotte-Mecklenburg Bd. of Educ., 318 F. Supp. 786 (W.D.N.C. 1970).

§ 116-143.1. Definitions; military status provisions. — (a) A nonresident shall be any person not qualifying for in-state tuition as hereinafter defined.

(b) To qualify for in-state tuition a legal resident must have maintained his domicile in North Carolina for at least the 12 months immediately prior to his classification as a resident for tuition purposes. In order to be eligible for such classification, the individual must establish that his or her presence in the State during such 12-month period was for purposes of maintaining a bona fide domicile rather than for purposes of mere temporary residence incident to enrollment in an institution of higher education; further, (i) if the parents (or court-appointed legal guardian) of the individual seeking resident classification are (is) bona fide domiciliaries of this State, this fact shall be prima facie evidence of domiciliary status of the individual applicant and (ii) if such parents or guardian are not bona fide domiciliaries of this State, this fact shall be prima facie evidence of nondomiciliary status of the individual.

(c) No person shall lose his in-state resident status by serving in the armed forces outside of the State of North Carolina.

(d) A person who, by virtue of bona fide legal residence in North Carolina for the requisite 12 months has been classified as a resident for tuition purposes but who, while enrolled in a State institution of higher education in North Carolina, loses North Carolina legal residence, shall continue to enjoy the in-state tuition rate for a statutory grace period. This grace period shall be measured from the date on which the culminating circumstances arose that caused loss of legal residence and shall continue for 12 months; provided that if the 12-month period ends during a semester or academic term in which such a former resident is enrolled at a State institution of higher education, such grace period shall extend, in addition, to the end of that semester or academic term.

(e) Any spouse of a North Carolina resident shall be entitled to in-state tuition rates at the beginning of the next succeeding academic period.

(f) Any person who by virtue of marriage to a North Carolina resident thereby acquires, by operation of law, a bona fide legal residence in North Carolina shall be eligible for in-state tuition rates at a time calculated in that one of the following ways which earlier confers such eligibility:

(1) If the original North Carolina resident spouse had maintained such legal residence for a period of at least 12 months immediately prior to the marriage, the newly resident spouse shall first be eligible for the in-state rate at the next succeeding semester, term or quarter following the date of marriage;

(2) If the original North Carolina resident spouse had not maintained such legal residence for a period of at least 12 months immediately prior to the marriage, the newly resident spouse shall first be eligible for the in-state rate at the next succeeding semester, quarter or term following expiration of 12 months of legal residence by the original resident spouse. (1971, c. 845, ss. 7-9; 1973, cc. 710, 1364, 1377.)

Editor's Note. — The first 1973 amendment rewrote subsection (b).

The second 1973 amendment added subsection (d).

The third 1973 amendment added subsections (e) and (f).

The State has no obligation to provide educational opportunities to noncitizens. Its interests require that it subsidize only those students whom it may be certain are North Carolina citizens. Uncertainty as to the circumstances under which the tuition status of students may change is fiscally and administratively undesirable. Glusman v. Trustees of Univ. of N.C., 281 N.C. 629, 190 S.E.2d 213 (1972); Fox v. Trustees of Consol. Univ. of N.C., 16 N.C. App. 53, 190 S.E.2d 884 (1972).

Presumption of Residence for Educational Purposes Is Valid. — See Glusman v. Trustees of Univ. of N.C., 281 N.C. 629, 190 S.E.2d 213 (1972).

Nonattendance Domicile Requirement under Section Is Reasonable. — It is reasonable for the State to require that one desiring in-state resident status for purposes of admission be a domiciliary of North Carolina and be so domiciled while not in attendance at an institution of higher education for a consecutive 12-month period next preceding the date of first enrollment or reenrollment in an institution of higher education in this State. Fox v. Trustees of Consol. Univ. of N.C., 16 N.C. App. 53, 190 S.E.2d 884 (1972).

As Is Six-Month Requirement under University Regulations. — It is reasonable for the State to require a domiciliary of another state, in addition to being domiciled in North Carolina, be so domiciled while not in attendance at an institution of higher education for a six-month period, as specified in tuition regulations adopted by the Board of Trustees of the University of North Carolina, before he may qualify for in-state tuition. Glusman v. Trustees of Univ. of N.C., 281 N.C. 629, 190 S.E.2d 213 (1972).

The requirement of domicile while not in attendance at an institution of higher education is reasonable. The object is to assure that students who benefit from the in-state tuition subsidy the State provides for its citizens are in fact its own citizens. The Board of Trustees of the University of North Carolina has determined that domicile is only one of the prerequisites for in-state tuition status and alone is insufficient for this purpose. Glusman v. Trustees of Univ. of N.C., 281 N.C. 629, 190 S.E.2d 213 (1972); Fox v. Trustees of Consol. Univ. of N.C., 16 N.C. App. 53, 190 S.E.2d 884 (1972).

The six-month nonattendance requirement to qualify for in-state tuition under regulations adopted by the Board of Trustees of the University of North Carolina adds objectivity and certainty to the requirement of domicile. This certainty is not obtained by placing an unreasonable burden on students. Petitioners were not barred by regulations of the Board of Trustees of the University of North Carolina from becoming domiciliaries of North Carolina. Nor were they barred from becoming eligible for in-state tuition. Rather, they were only required, if they wanted that status, to be domiciled in North Carolina for six months while not in the law school. Glusman v. Trustees of Univ. of N.C., 281 N.C. 629, 190 S.E.2d 213 (1972); Fox v. Trustees of Consol. Univ. of N.C., 16 N.C. App. 53, 190 S.E.2d 884 (1972).

That the Board of Trustees of the University of North Carolina might have chosen other objective indicators to test the domiciliary intent of applicants for in-state tuition is not to say the one chosen was unreasonable. That there may be hardship cases resulting from the enforcement of these regulations is also not to say they are unreasonable. Glusman v. Trustees of Univ. of N.C., 281 N.C. 629, 190 S.E.2d 213 (1972).

Section Does Not Deny Constitutional Rights. — This section does not deny to student citizens originally from other states their right to equal educational opportunities, and does not

violate the constitutional right to travel freely from one state to another. Fox v. Trustees of Consol. Univ. of N.C., 16 N.C. App. 53, 190 S.E.2d 884 (1972).

Neither Do Regulations by Board of Trustees. — A person's right to eligibility for in-state tuition is quite different from his basic constitutional right to travel freely from one state to another or his basic constitutional right to vote. The regulations of the Board of Trustees of the University of North Carolina do not impede interstate travel. Since they do not relate to basic constitutional rights, the regulations are to be tested by the less stringent traditional equal-protection standards. The constitutional test is whether the regulations have tended in general to assure that only North Carolina citizens get the benefit of in-state tuition, which the regulations have done. Glusman v. Trustees of Univ. of N.C., 281 N.C. 629, 190 S.E.2d 213 (1972); Fox v. Trustees of Consol. Univ. of N.C., 16 N.C. App. 53, 190 S.E.2d 884 (1972).

Domicile Status of Women Does Not Deny Equal Protection. — Under the regulations of the Board of Trustees of the University of North Carolina, domiciliary status was not equivalent to in-state tuition status. Although a woman was deemed a domiciliary of North Carolina from the date of her marriage, to become eligible for in-state tuition a married woman, just as any other student, had to establish actual residence in this State for six continuous months exclusive of the time spent while in attendance at an institution of higher education. The regulations placed upon all students domiciled in North Carolina, regardless of sex, the burden of showing that they had been domiciled in North Carolina for six months while not in attendance at an institution of higher education, to qualify for in-state tuition, and did not deny to men similarly situated a benefit in violation of the equal protection clauses of the North Carolina and United States Constitutions. Glusman v. Trustees of Univ. of N.C., 281 N.C. 629, 190 S.E.2d 213 (1972).

§ 116-144. Higher fees from nonresidents may be charged. — The provisions of this Article shall not be construed to prohibit the several boards of trustees from charging nonresident students tuition in excess of that charged resident students. (1933, c. 320, s. 3.)

The State's right to charge nonresidents higher tuition than residents is not challenged and has been repeatedly upheld as reasonably related to the State's legitimate interest in operating, maintaining and financing its educational institutions. Glusman v. Trustees of Univ. of N.C., 281 N.C. 629, 190 S.E.2d 213 (1972).

In the establishment and operation of its institutions of higher education, North Carolina's obligation and primary purpose is to provide opportunities to citizens of this State. In furtherance thereof, in-state students are not required to pay tuition fees equivalent to the per capita cost but may enroll upon payment of the low in-state tuition. North Carolina is not in a position to provide opportunities to citizens of other states on this low-cost basis. Glusman v. Trustees of Univ. of N.C., 281 N.C. 629, 190 S.E.2d 213 (1972).

Quoted in Swann v. Charlotte-Mecklenburg Bd. of Educ., 318 F. Supp. 786 (W.D.N.C. 1970).

Cited in Barker v. Iowa Mut. Ins. Co., 241 N.C. 397, 85 S.E.2d 305 (1955).

ARTICLE 15.

Educational Advantages for Children of World War Veterans.

§§ 116-145 to 116-148.1: Repealed by Session Laws 1951, c. 1160, s. 1.

§§ 116-149 to 116-153: Repealed by Session Laws 1967, c. 1060, s. 10.

ARTICLE 16.

State Board of Higher Education.

§§ 116-154 to 116-157: Repealed by Session Laws 1971, c. 1244, s. 14.

§ 116-158. Powers and duties generally. — The Board shall have the following specific powers and duties, in the exercise and performance of which it shall be subject to the provisions of Article 1, Chapter 143 of the General Statutes except as herein otherwise provided:

(1) to (8) Repealed by Session Laws 1971, c. 1244, s. 14.
(9) Transferred to G.S. 116-18 by Session Laws 1971, c. 1244, s. 4. (1955, c. 1186, s. 5; 1959, c. 326, ss. 2-7; 1965, c. 1096, s. 3; 1971, c. 1244, ss. 4, 14.)

§§ 116-158.1 to 116-158.4: Transferred to G.S. 116-19 to 116-22 by Session Laws 1971, c. 1244, s. 5.

§§ 116-159 to 116-167: Repealed by Session Laws 1971, c. 1244, s. 14.

ARTICLE 17.

College Revolving Fund.

§ 116-168. Establishment, purpose and nature of fund; loans. — There is hereby established a revolving fund to be known as the "College Revolving Fund." The College Revolving Fund shall be separate and distinct from other funds of the State, and shall be used only for the purpose of constructing, reconstruction, renovating, adding to and equipping dormitories and other self-liquidating buildings and facilities at institutions of higher education owned and operated by the State of North Carolina.

The College Revolving Fund shall consist of such moneys as shall from time to time be appropriated to or for it by the General Assembly of North Carolina out of the general fund or other funds of the State, of such moneys, securities or other property as may be donated, bequeathed or devised to it from any other sources, of all moneys received in payment of principal and interest on loans made from said fund, and of all other income derived from and accretions to said fund.

Funds accruing to the College Revolving Fund and all notes evidencing loans therefrom shall be deposited with the State Treasurer.

The Advisory Budget Commission, under such rules and regulations as it may deem advisable, not inconsistent with the provisions of this Article, may, in accordance with priorities of need as determined by the Board of Governors of the University of North Carolina, make loans from the College Revolving Fund, for the aforesaid purposes, to institutions of higher education owned and operated by the State of North Carolina; provided, however, that no such loan shall be made for any project which shall not have been previously approved by the General Assembly.

Warrants for the payment of money from the College Revolving Fund shall be issued upon the joint order of the chairman of the Advisory Budget Commission and the Board of Governors of the University of North Carolina. (1957, c. 1252, s. 1; 1971, c. 1244, s. 14.)

§ 116-169. Terms of loans. — Loans from the College Revolving Fund shall be made upon such terms and conditions as shall be determined by the Advisory Budget Commission, provided, however, that the term of such loans shall not exceed 50 years and interest charged thereon shall not exceed four percent (4%) per annum. All such loans shall be evidenced by a promissory note or notes of the institution to which the loan is made, duly executed in the name of the institution by the chairman of the board of trustees, and attested by its secretary, pursuant to resolution duly adopted by the board of trustees of the institution. No institution to which any such loan is made shall mortgage or otherwise encumber any building or other facility constructed in whole or in part with the proceeds of such loans or encumber any of the revenue derived from such building or facility. (1957, c. 1252, s. 2.)

§ 116-170. How loans secured and paid. — Room rentals for dormitories, and rents, fees, or charges to be made in connection with the use of other facilities

or buildings constructed with loans from the College Revolving Fund shall be fixed, and if necessary changed from time to time, pursuant to agreement between the borrowing institution and the Advisory Budget Commission at such amount or amounts as will provide for the operation and maintenance of the building or other facility and equipment and will insure the liquidation of the loan according to its terms; provided, however, that if agreement cannot be reached, the Advisory Budget Commission shall have authority to fix all such rents, fees and charges. Payments on such loans shall be made by the borrowing institution to the State Treasurer, who shall deposit same in the College Revolving Fund. The borrowing institution shall have the privilege of prepaying such loans and interest accrued thereon without penalty. (1957, c. 1252, s. 3.)

ARTICLE 18.

Scholarship Loan Fund for Prospective Teachers.

§ 116-171. Establishment of fund. — There is hereby established a revolving loan fund which shall be known as the "Scholarship Loan Fund for Prospective Teachers." (1957, c. 1237.)

§ 116-172. Appropriations paid into fund; how administered. — Such funds as may be appropriated by the General Assembly to said fund or to the State Board of Education for the purpose of a student loan fund for teacher education shall be paid into the Scholarship Loan Fund for Prospective Teachers and administered by the State Board of Education and the State Superintendent of Public Instruction as follows:

During the first year of the 1957-1959 biennium, to provide for prospective teachers not to exceed 300 regular scholarship loans in the amount of not more than three hundred fifty dollars ($350.00) each, and for the second year of the biennium to provide for such persons not to exceed 600 regular scholarship loans in the amount of not more than three hundred fifty dollars ($350.00) each, and for each summer of said biennium to provide for prospective teachers and for teachers taking undergraduate courses not to exceed 200 summer school scholarship loans in the amount of not more than seventy-five dollars ($75.00) each; provided, however, the State Board of Education in its discretion may, within the funds available, vary the number and proportion of regular and summer scholarship loans to be established in any one year.

During years after the first biennium in which this fund shall be established, loans of the type and amounts provided for during the first biennium shall be made in such numbers and amounts and proportions as the State Board of Education in its discretion may prescribe within the funds available from appropriations or otherwise. (1957, c. 1237.)

§ 116-173. Duration of fund; loans repaid and interest received added to fund and administered for same purposes.—The Scholarship Loan Fund for Prospective Teachers shall continue in effect until terminated by action of the General Assembly of North Carolina and such amounts of loans as shall be repaid from time to time under the provisions of this Article, together with such amounts of interest as may be received on account of loans made shall become a part of the principal amount of said loan fund and shall be administered for the same purposes and under the same provisions as are set forth herein to the end that such funds may be utilized in addition to such further amounts as may be appropriated from time to time by the General Assembly to said loan fund. (1957, c. 1237.)

§ 116-174. Fund administered by State Superintendent of Public Instruction; rules and regulations. — The Scholarship Loan Fund for

Prospective Teachers shall be administered by the State Superintendent of Public Instruction, under the following rules and regulations, and under such further rules and regulations as the State Board of Education shall in its discretion promulgate:

(1) Any resident of North Carolina who is interested in preparing to teach in the public schools of the State shall be eligible to apply in writing to the State Superintendent of Public Instruction for a regular scholarship loan in the amount of not more than three hundred fifty dollars ($350.00) per academic school year and any such person or any person who is teaching in the public schools of the State and is interested in taking further undergraduate courses shall be eligible to apply for a summer school scholarship loan in the amount of not more than seventy-five dollars ($75.00). Recipients of scholarship loans may attend any North Carolina college or university, public or private, which offers teacher training or work leading to teacher training and which is approved by the State Board of Education; except that scholarship loans may not be used in obtaining credit through correspondence or extension courses.

(2) All scholarship loans shall be evidenced by notes made payable to the State Board of Education which shall bear interest at the rate of four percent (4%) per annum from and after September 1 following fulfillment by a prospective teacher of the requirements for a teacher's certificate based upon the bachelor's degree; or in the case of persons already teaching in the public schools who obtain scholarship loans such notes shall bear interest at the prescribed rate from and after September 1 of the school year beginning immediately after the use of such scholarship loans; or in the event any such scholarship shall be terminated under the provisions of subdivision (3) of this section then such notes shall bear interest from the date of such termination. A minor recipient who signs such note or notes shall also obtain the endorsement thereon by a parent, if there be a living parent, unless such endorsement is waived by the Superintendent of Public Instruction. Such minor recipient shall be obligated upon such note or notes as fully as if he or she were of age and shall not be permitted to plead such minority as a defense in order to avoid the obligations undertaken upon such note or notes.

(3) Each recipient of a scholarship loan under the provisions of this program shall be eligible for scholarship loans each year until he has qualified for a teacher's certificate based upon the bachelor's degree, but he shall not be so eligible for more than four years nor after qualifying for said certificate. The permanent withdrawal of any recipient from college or failure of such recipient to do college work in a manner acceptable to the State Superintendent of Public Instruction will immediately forfeit such recipient's right to retain such scholarship and subject such scholarship to termination by the State Superintendent of Public Instruction in his discretion. All terminated scholarships shall be regarded as vacant and subject to being awarded to other eligible persons.

(4) Except under emergency conditions applicable to the State Superintendent of Public Instruction, recipients of scholarship loans shall enter the public school system of North Carolina or shall become regularly employed as teachers in schools operated by the United States government on military reservations in the State of North Carolina at the beginning of the next school term after qualifying for a teacher certificate based upon the bachelor's degree or in case of persons already teaching in the public schools or in schools operated

by the United States government on military reservations in North Carolina at the beginning of the next school term after the use of such loan. All teaching service for which the recipient of any scholarship loan is obligated shall be rendered within seven years after the completion of the use of each such scholarship loan.

(5) For each full school year taught in a North Carolina public school or in a school operated by the United States government on the military reservation in the State of North Carolina, the recipient of a scholarship loan shall receive credit upon the amount due by reason of such loan equal to all interest accrued upon the loan to that time plus a credit of three hundred fifty dollars ($350.00) upon the principal amount of such obligation or such lesser amount as may remain due upon said principal; provided, however, that in lieu of teaching in the public school or in any school operated by the United States government on a military reservation in North Carolina, a recipient may elect to pay in cash the full amount of scholarship loans received plus interest then due thereon or any part thereof which has not been canceled by the State Board of Education by reason of teaching service rendered.

(6) If any recipient of a scholarship loan who is fulfilling his obligation under subdivision (4) of this section dies within the seven-year period, or if any recipient dies during the period of attendance at a college or university under a scholarship loan, any balance that has not been discharged through service shall be automatically canceled.

If any recipient of a scholarship loan fails to fulfill his obligations under subdivision (4) of this section, other than as provided above, the amount of his loan and accrued interest, if any, shall be due and payable from the time of failure to fulfill such obligations.

(7) The State Superintendent of Public Instruction shall award scholarship loans with due consideration to such factors and circumstances as: aptitude, purposefulness, scholarship, character, financial need, and areas or subjects of instruction in which the demands for teachers are greatest. Since the primary purpose of this Article is to attract worthy young people to the teaching profession, preference shall be given to high school seniors in the awarding of scholarships. (1957, c. 1237; 1973, c. 581, ss. 1, 2.)

Editor's Note. — The 1973 amendment rewrote the first sentence of subdivision (4) and inserted "or in a school operated by the United States government on the military reservation in the State of North Carolina" and "or in any school operated by the United States government on a military reservation in North Carolina" in subdivision (5). The amendment also substituted "public school" for "public schools" in the proviso to subdivision (5).

ARTICLE 18A.

Contracts of Minors Borrowing for Higher Education; Scholarship Revocation.

§ 116-174.1. Minors authorized to borrow for higher education; interest; requirements of loans. — All minors in North Carolina of the age of 17 years and upwards shall have full power and authority to enter into written contracts of indebtedness, at a rate of interest not exceeding the contract rate authorized in Chapter 24 of the General Statutes, with persons and educational institutions or with firms and corporations licensed to do business in North Carolina and to execute notes evidencing such indebtedness. Such loans shall be:

(1) Unsecured by the conveyance of any property as security, whether real, personal or mixed;

(2) For the sole purpose of borrowing money to obtain post-secondary education at an accredited college, university, junior college, community college, technical institute, industrial education center, business or trade school provided, however, that none of the proceeds of such loans shall be used to pay for any correspondence courses;
(3) The proceeds of any loan shall be disbursed either directly to the educational institution for the benefit of the borrower or jointly to the borrower and the educational institution. (1963, c. 780; 1969, c. 1073.)

Quoted in Gastonia Personnel Corp. v. Rogers, 276 N.C. 279, 172 S.E.2d 19 (1970).

§ 116-174.2. Grounds for revocation of scholarships. — Any student regularly registered and enrolled as an undergraduate, graduate, or professional student in a state-supported college, university or community college who shall be convicted, enter a plea of guilty or nolo contendere upon an indictment or charge for engaging in a riot, inciting a riot, unlawful demonstration or assembly, seizing or occupying a building or facility, sitting down in buildings they have seized, or lying down in entrances to buildings or any facilities, or on the campus of any college, university, or community college, or any student, whether an undergraduate, graduate or professional student who shall forfeit an appearance bond on an indictment or charge of any of the above-named offenses, shall have revoked and withdrawn from his benefit all state-supported scholarships or any State funds granted to him for educational assistance. It shall be the duty of all persons or officials having charge of and authority over the granting of state-supported scholarships or any other form of financial assistance to immediately revoke and withdraw same in the event and upon the happening of any of the conditions or matters above enumerated; provided, however, that in subsequent academic terms any such student shall be eligible to be considered for and to be granted financial assistance from State funds. (1969, c. 1019.)

ARTICLE 19.

Revenue Bonds for Student Housing.

§ 116-175. Definitions. — As used in this Article, the following words and terms shall have the following meanings, unless the context shall indicate another or different meaning or intent.

(1) The word "Board" shall mean the Board of Governors of the University of North Carolina.
(2) The word "cost" as applied to a project shall include the cost of acquisition or construction, the cost of all labor, materials and equipment, the cost of all lands, property, rights and easements acquired, financing charges, interest prior to and during construction and, if deemed advisable by the Board, for one year after completion of construction, cost of plans and specifications, surveys and estimates of cost and/or revenues, cost of engineering and legal services, and all other expenses necessary or incident to such acquisition or construction, administrative expense and such other expenses, including reasonable provision for initial operating expenses, as may be necessary or incident to the financing herein authorized. Any obligation or expense incurred by the Board prior to the issuance of bonds under the provisions of this Article in connection with any of the foregoing items of cost may be regarded as a part of such cost.

(3) The word "institution" shall mean each of the institutions enumerated in G.S. 116-2.

(4) The word "project" shall mean and shall include any one or more buildings for student housing of any size or type approved by the Board of Governors of the University of North Carolina, and the Advisory Budget Commission, and any enlargements or improvements thereof or additions thereto, so approved for the housing of students at either institution, together with the necessary land and equipment. The approval of a project by the Board of Governors of the University of North Carolina and the Advisory Budget Commission shall specify a time within which construction contracts shall be awarded. (1957, c. 1131, s. 1; 1963, cc. 421, 422; c. 448, s. 20.1; c. 1158, ss. 1, 1½; 1965, c. 31, s. 3; 1967, c. 1038; 1969, c. 297, s. 7; c. 388; c. 608, s. 1; c. 801, ss. 2-4; 1971, c. 1244, s. 16.)

Cross Reference. — As to revenue bonds for services and auxiliary facilities at the University of North Carolina, see §§ 116-41.1 through 116-41.12.

§ 116-176. Issuance of bonds. — The Board is hereby authorized to issue, subject to the approval of the Advisory Budget Commission, at one time or from time to time, revenue bonds of the Board for the purpose of acquiring or constructing any project or projects. The bonds of each issue shall be dated, shall mature at such time or times not exceeding 50 years from their date or dates, shall bear interest at such rate or rates not exceeding eight per centum (8%) per annum, as may be determined by the Board, and may be redeemable before maturity, at the option of the Board, at such price or prices and under such terms and conditions as may be fixed by the Board prior to the issuance of the bonds. The Board shall determine the form and manner of execution of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the State. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before the delivery of such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. Notwithstanding any of the other provisions of this Article or any recitals in any bonds issued under the provisions of this Article, all such bonds shall be deemed to be negotiable instruments under the laws of this State. The bonds may be issued in coupon or registered form or both, as the Board may determine, and provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest. The Board may sell such bonds in such manner, at public or private sale, and for such price, as it may determine to be for the best interests of the Board, but no sale shall be made at a price so low as to require the payment of interest on the money received therefor at more than eight per centum (8%) per annum, computed with relation to the absolute maturity or maturities of the bonds in accordance with standard tables of bond values, excluding, however, from such computation the amount of any premium to be paid on redemption of any bonds prior to maturity.

The proceeds of the bonds of each issue shall be used solely for the purpose for which such bonds shall have been authorized and shall be disbursed in such manner and under such restrictions, if any, as the Board may provide in the resolution authorizing the issuance of such bonds or in the trust agreement hereinafter mentioned securing the same. Unless otherwise provided in the authorizing resolution or in the trust agreement securing such bonds, if the

proceeds of such bonds, by error of estimates or otherwise, shall be less than such cost, additional bonds may in like manner be issued to provide the amount of such deficit and shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the bonds first issued for the same purpose.

The resolution providing for the issuance of revenue bonds, and any trust agreement securing such bonds, may also contain such limitations upon the issuance of additional revenue bonds as the Board may deem proper, and such additional bonds shall be issued under such restrictions and limitations as may be prescribed by such resolution or trust agreement.

Prior to the preparation of definitive bonds, the Board may, under like restrictions, issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery. The Board may also provide for the replacement of any bonds which shall become mutilated or be destroyed or lost.

Bonds may be issued by the Board under the provisions of this Article, subject to the approval of the Advisory Budget Commission, but without obtaining the consent of any other commission, board, bureau or agency of the State, and without any other proceedings or the happening of any other conditions or things than those consents, proceedings, conditions or things which are specifically required by this Article.

Revenue bonds issued under the provisions of this Article shall not be deemed to constitute a debt of the State of North Carolina or a pledge of the faith and credit of the State, but such bonds shall be payable solely from the funds herein provided therefor and a statement to that effect shall be recited on the face of the bonds.

The Board may enter into or negotiate a note with an acceptable bank or trust company in lieu of issuing bonds for the financing of projects covered under this Article. The terms and conditions of any note of this nature shall be in accordance with the terms and conditions surrounding issuance of bonds. (1957, c. 1131, s. 2; 1969, c. 1158, s. 1; 1971, c. 511, s. 1.)

§ 116-177. Revenues for payment of bonds; rules for use of facilities. — So long as any bonds issued under this Article shall be outstanding the Board shall fix, and may revise from time to time, rentals for the facilities to be furnished by any project financed under this Article or for the right to use any such facilities or to receive any such services. Such rentals shall be fixed and revised so that the revenues received by the Board from any project or projects, together with any other available funds, will be sufficient at all times

(1) To pay the cost of maintaining, repairing and operating such project or projects, including reserves for such purposes, and

(2) To pay when added to increased rentals from existing facilities the principal of and the interest on the bonds for the payment of which such revenues are pledged and to provide reserves therefor.

The Board shall increase the rentals for the facilities furnished by any existing dormitories at any institution to provide, to the extent necessary, additional funds to liquidate in full any revenue bonds issued under this Article.

The Board is further authorized to make and enforce and to contract to make and enforce parietal rules that shall insure the maximum use of any project or existing facilities. (1957, c. 1131, s. 3.)

§ 116-178. Trust agreement. — In the discretion of the Board and subject to the approval of the Advisory Budget Commission, each or any issue of revenue bonds may be secured by a trust agreement by and between the Board and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the State. The resolution authorizing the issuance of the bonds or such trust agreement may pledge to the extent

necessary the revenues to be received from any project or projects at any institution and from any similar existing facilities described in G.S. 116-175(4) at the same institution, in excess of amounts now charged to each occupant of such project, but shall not convey or mortgage any such project or existing facilities, and may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the Board in relation to the acquisition or construction of such project or projects and in relation to the maintenance, repair, operation and insurance of such project or projects and such existing facilities, the fixing and revising of rentals and other charges; and, the custody, safeguarding and application of all moneys, and for the employment of consulting engineers or architects in connection with such acquisition, construction or operation. Notwithstanding the provisions of any other law the Board may carry insurance on any such project or projects in such amounts and covering such risks as it may deem advisable. It shall be lawful for any bank or trust company incorporated under the laws of the State of North Carolina which may act as depository of the proceeds of bonds or of revenues to furnish such indemnifying bonds or to pledge such securities as may be required by the Board. Such resolution or trust agreement may set forth the rights and remedies of the bondholders and of the trustees, if any, and may restrict the individual right of action by bondholders. Such resolution or trust agreement may contain such other provisions in addition to the foregoing as the Board may deem reasonable and proper for the security of the bondholders.

The Board may provide for the payment of the proceeds of the sale of the bonds and the revenues of any project or existing facilities or part thereof to such officer, board or depository as it may designate for the custody thereof, and for the method of disbursement thereof, with such safeguards and restrictions as it may determine. All expenses incurred in carrying out the provisions of such resolution or trust agreement may be treated as a part of the cost of operation.

All pledges of revenues under the provisions of this Article shall be valid and binding from the time when such pledges are made. All such revenues so pledged and thereafter received by the Board shall immediately be subject to the lien of such pledges without any physical delivery thereof or further action, and the lien of such pledges shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the Board, irrespective of whether such parties have notice thereof. (1957, c. 1131, s. 4.)

§ 116-179. Sale of bonds; functions performed by executive committee. — The Board may authorize its executive committee to sell any bonds which the Board has, with the approval of the Advisory Budget Commission, authorized to be issued under this Article in such manner and under such limitations or conditions as the Board shall prescribe and to perform such other functions under this Article as the Board shall determine. (1957, c. 1131, s. 5.)

§ 116-180. Moneys received deemed trust funds. — All moneys received pursuant to the authority of this Article shall be deemed to be trust funds, to be held and applied solely as provided in this Article. The resolution authorizing the issuance of bonds or the trust agreement securing such bonds shall provide that any officer to whom, or bank, trust company or fiscal agent to which, such moneys shall be paid shall act as trustee of such moneys and shall hold and apply the same for the purposes hereof, subject to such regulations as such resolution or trust agreement may provide. (1957, c. 1131, s. 6.)

§ 116-181. Remedies. — Any holder of revenue bonds issued under the provisions of this Article or of any of the coupons appertaining thereto, and the trustee under any trust agreement, except to the extent that the rights herein given may be restricted by the resolution authorizing the issuance of such bonds

or by such trust agreement, may, either at law or in equity, by suit, action, mandamus or other proceeding, protect and enforce any and all rights under the laws of the State of North Carolina or granted hereunder or under such resolution or trust agreement, and may enforce and compel the performance of all duties required by this Article or by such resolution or trust agreement to be performed by the Board or by any officer thereof, including the fixing, charging and collecting of fees, rentals and other charges. (1957, c. 1131, s. 7.)

§ 116-182. Refunding bonds. — The Board is hereby authorized, subject to the approval of the Advisory Budget Commission, to issue from time to time revenue refunding bonds for the purpose of refunding any revenue bonds issued by the Board in connection with any project or projects at any one institution, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds. The Board is further authorized, subject to the approval of the Advisory Budget Commission, to issue from time to time revenue refunding bonds for the combined purpose of

(1) Refunding any revenue bonds or revenue refunding bonds issued by the Board in connection with any project or projects at any one institution, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds, and

(2) Paying all or any part of the cost of acquiring or constructing any additional project or projects at the same institution.

The issuance of such bonds, the maturities and other details thereof, the rights and remedies of the holders thereof, and the rights, powers, privileges, duties and obligations of the Board with respect to the same, shall be governed by the foregoing provisions of this Article insofar as the same may be applicable. (1957, c. 1131, s. 8.)

Cross Reference. — As to refunding bonds issued under this Article, see § 116-195.

§ 116-183. Acceptance of grants; exemption from taxation. — The Board is hereby authorized, subject to the approval of the Advisory Budget Commission, to accept grants of money or materials or property of any kind for any project from a federal agency, private agency, corporation or individual, upon such terms and conditions as such federal agency, private agency, corporation or individual may impose. The bonds issued under the provisions of this Article and the income therefrom shall at all times be free from taxation within the State. (1957, c. 1131, s. 9.)

§ 116-184. Article cumulative. — This Article shall be deemed to provide an additional and alternative method for the doing of the things authorized hereby and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of or as repealing any powers now existing under any other law, either general, special or local; provided, however, that the issuance of revenue bonds or revenue refunding bonds under the provisions of this Article need not comply with the requirements of any other law applicable to the issuance of bonds. (1957, c. 1131, s. 10.)

§ 116-185. Inconsistent laws declared inapplicable. — All general, special or local laws, or parts thereof, inconsistent herewith are hereby declared to be inapplicable to the provisions of this Article. (1957, c. 1131, s. 11.)

ARTICLE 20.

Motor Vehicles of Students.

§ 116-186: Transferred to G.S. 116-42.4 by Session Laws 1971, c. 1244, s. 11.

ARTICLE 21.

Revenue Bonds for Student Housing, Student Activities, Physical Education and Recreation.

§ 116-187. Purpose of Article. — The purpose of this Article is to authorize the Board of Governors of the University of North Carolina to issue revenue bonds, payable from rentals, charges, fees (including student fees) and other revenues but with no pledge of taxes or the faith and credit of the State or any agency or political subdivision thereof, to pay the cost, in whole or in part, of buildings and other facilities for the housing, health, welfare, recreation and convenience of students enrolled at the institutions hereinafter designated, housing of faculty, adult or continuing education programs and for revenue-producing parking decks or structures. (1963, c. 847, s. 1; 1967, c. 1148, s. 1; 1971, c. 1061, s. 1; c. 1244, s. 16.)

§ 116-188. Credit and taxing power of State not pledged; statement on face of bonds. — Revenue bonds issued as in this Article provided shall not be deemed to constitute a debt or liability of the State or any political subdivision thereof or a pledge of the faith and credit of the State or of any such political subdivision, but shall be payable solely from the funds herein provided therefor from revenues. All such revenue bonds shall contain on the face thereof a statement to the effect that neither the State nor the Board (herein mentioned) shall be obligated to pay the same or the interest thereon except from revenues as herein defined and that neither the faith and credit nor the taxing power of the State or of any political subdivision or instrumentality thereof is pledged to the payment of the principal of or the interest on such bonds. The issuance of revenue bonds hereunder shall not directly or indirectly or contingently obligate the State or any political subdivision thereof to levy or to pledge any taxes whatsoever therefor. (1963, c. 847, s. 2.)

§ 116-189. Definitions. — As used in this Article, the following words and terms shall have the following meanings, unless the context shall indicate another or different meaning or intent:

(1) The word "Board" shall mean the Board of Governors of the University of North Carolina.

(2) The word "cost," as applied to any project, shall include the cost of acquisition or construction, the cost of acquisition of all property, both real and personal, or interests therein, the cost of demolishing, removing or relocating any buildings or structures on land so acquired, including the cost of acquiring any lands to which such buildings or structures may be moved or relocated, the cost of all labor, materials, equipment and furnishings, financing charges, interest prior to and during construction and, if deemed advisable by the Board, for a period not exceeding one year after completion of such construction, provisions for working capital, reserves for debt service and for extensions, enlargements, additions and improvements, cost of engineering, financial and legal services, plans, specifications, studies, surveys, estimates of cost and of revenues, administrative expenses, expenses necessary or incident to determining the feasibility or practicability of constructing the project, and such other expenses as may be necessary or incident to the acquisition or construction of the

project, the financing of such acquisition or construction, and the placing of the project in operation. Any obligation or expense incurred by the Board prior to the issuance of bonds under the provisions of this Article in connection with any of the foregoing items of cost may be regarded as a part of such cost.

(3) The term "existing facilities" shall mean buildings and facilities then existing any part of the revenues of which are pledged under the provisions of any resolution authorizing the issuance of revenue bonds hereunder to the payment of such bonds.

(4) The word "institution" shall mean each of the institutions enumerated in G.S. 116-2.

(5) The word "project" shall mean and shall include any one or more buildings or facilities for (i) the housing, health, welfare, recreation and convenience of students, (ii) the housing of faculty, (iii) adult or continuing education, and (iv) revenue-producing parking decks or structures, of any size or type approved by the Board and the Advisory Budget Commission and any enlargements, improvements or additions so approved of or to any such buildings or facilities now or hereafter existing, including, but without limiting the generality thereof, dormitories and other student, faculty and adult or continuing education housing, dining facilities, student centers, gymnasiums, field houses and other physical education and recreation buildings, structures and facilities, infirmaries and other health care buildings, structures and facilities, academic facilities for adult or continuing education, and necessary land and interests in land, furnishings, equipment and parking facilities. Any project comprising a building or buildings for student activities or adult or continuing education or any enlargement or improvement thereof or addition thereto may include, without limiting the generality thereof, facilities for services such as lounges, restrooms, lockers, offices, stores for books and supplies, snack bars, cafeterias, restaurants, laundries, cleaning, postal, banking and similar services, offices, rooms and other facilities for guests and visitors and facilities for meetings and for recreational, cultural and entertainment activities.

(6) The word "revenues" shall mean all or any part of the rents, charges, fees (including student fees) and other income revenues derived from or in connection with any project or projects and existing facilities, and may include receipts and other income derived from athletic games and public events. (1963, c. 847, s. 3; 1965, c. 31, s. 3; 1967, c. 1038; c. 1148, s. 2; 1969, c. 297, s. 8; c. 388; c. 608, s. 1; c. 801, ss. 2-4; 1971, c. 1061, s. 2; c. 1244, s. 16.)

§ 116-190. General powers of Board of Governors. — The Board is authorized, subject to the requirements of this Article:

(1) To determine the location and character of any project or projects and to acquire, construct and provide the same and to maintain, repair and operate and enter into contracts for the management, lease, use or operation of all or any portion of any project or projects and any existing facilities;

(2) To issue revenue bonds as hereinafter provided to pay all or any part of the cost of any project or projects, and to fund or refund the same;

(3) To fix and revise from time to time and charge and collect (i) student fees from students enrolled at the institution operated by the Board, (ii) rates, fees, rents and charges for the use of and for the services furnished by all or any portion of any project or projects and (iii) admission fees for athletic games and other public events;

(4) To establish and enforce, and to agree through any resolution or trust agreement authorizing or securing bonds under this Article to make and enforce, rules and regulations for the use of and services rendered by any project or projects and any existing facilities, including parietal rules, when deemed desirable by the Board, to provide for the maximum use of any project or projects and any existing facilities;

(5) To acquire, hold, lease and dispose of real and personal property in the exercise of its powers and the performance of its duties hereunder and to lease all or any part of any project or projects and any existing facilities for such period or periods of years, not exceeding 40 years, upon such terms and conditions as the Board determines subject to the provisions of G.S. 143-341;

(6) To employ consulting engineers, attorneys, accountants, construction and financial experts, superintendents, managers and such other employees and agents as may be necessary in its judgment in connection with any project or projects and existing facilities, and to fix their compensation;

(7) To make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this Article;

(8) To receive and accept from any federal, State or other public agency and any private agency, person or other entity donations, loans, grants, aid or contributions of any money, property, labor or other things of value for any project or projects, and to agree to apply and use the same in accordance with the terms and conditions under which the same are provided; and

(9) To do all acts and things necessary or convenient to carry out the powers granted by this Article. (1963, c. 847, s. 4; 1971, c. 1244, s. 14.)

§ 116-191. Issuance of bonds and bond anticipation notes. — The Board is hereby authorized to issue, subject to the approval of the Advisory Budget Commission, at one time or from time to time, revenue bonds of the Board for the purpose of paying all or any part of the cost of acquiring, constructing or providing any project or projects. The bonds of each issue shall be dated, shall mature at such time or times not exceeding 50 years from their date or dates, shall bear interest at such rate or rates not exceeding eight per centum (8%) per annum, as may be determined by the Board, and may be redeemable before maturity, at the option of the Board, at such price or prices and under such terms and conditions as may be fixed by the Board prior to the issuance of the bonds. The Board shall determine the form and manner of execution of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the State. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before the delivery of such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. Notwithstanding any of the other provisions of this Article or any recitals in any bonds issued under the provisions of this Article, all such bonds shall be deemed to be negotiable instruments under the laws of this State, subject only to the provisions for registration in any resolution authorizing the issuance of such bonds or any trust agreement securing the same. The bonds may be issued in coupon or registered form or both, as the Board may determine, and provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest. The Board may sell such bonds in

such manner, at public or private sale, and for such price, as it may determine to be for the best interests of the Board, but no sale shall be made at a price so low as to require the payment of interest on the money received therefor at more than eight per centum (8%) per annum, computed with relation to the absolute maturity or maturities of the bonds in accordance with standard tables of bond values, excluding, however, from such computation the amount of any premium to be paid on redemption of any bonds prior to maturity.

The proceeds of the bonds of each issue shall be used solely for the purpose for which such bonds shall have been authorized and shall be disbursed in such manner and under such restrictions, if any, as the Board may provide in the resolution authorizing the issuance of such bonds or in the trust agreement hereinafter mentioned securing the same. Unless otherwise provided in the authorizing resolution or in the trust agreement securing such bonds, if the proceeds of such bonds, by error of estimates or otherwise, shall be less than such cost, additional bonds may in like manner be issued to provide the amount of such deficit and shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the bonds first issued for the same purpose.

The resolution providing for the issuance of revenue bonds, and any trust agreement securing such bonds, may also contain such limitations upon the issuance of additional revenue bonds as the Board may deem proper, and such additional bonds shall be issued under such restrictions and limitations as may be prescribed by such resolution or trust agreement.

Prior to the preparation of definitive bonds, the Board may, under like restrictions, issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery. The Board may also provide for the replacement of any bonds which shall become mutilated or be destroyed or lost.

Except as herein otherwise provided, bonds may be issued under this Article and other powers vested in the Board under this Article may be exercised by the Board without obtaining the consent of any department, division, commission, board, bureau or agency of the State and without any other proceedings or the happening of any other conditions or things than those proceedings, conditions or things which are specifically required by this Article.

The Board may enter into or negotiate a note with an acceptable bank or trust company in lieu of issuing bonds for the financing of projects covered under this section. The terms and conditions of any note of this nature shall be in accordance with the terms and conditions surrounding issuance of bonds.

The Board is hereby authorized to issue, subject to the approval of the Advisory Budget Commission, at one time or from time to time, revenue bond anticipation notes of the Board in anticipation of the issuance of bonds authorized pursuant to the provisions of this Article. The principal of and the interest on such notes shall be payable solely from the proceeds of bonds or renewal notes or, in the event bond or renewal note proceeds are not available, any available revenues of the project or projects for which such bonds shall have been authorized. The notes of each issue shall be dated, shall mature at such time or times not exceeding two years from their date or dates, shall bear interest at such rate or rates not exceeding eight per centum (8%) per annum, as may be determined by the Board, and may be redeemable before maturity, at the option of the Board, at such price or prices and under such terms and conditions as may be fixed by the Board prior to the issuance of the notes. The Board shall determine the form and the manner of execution of the notes, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the notes and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the State. In case any officer, whose signature or a facsimile of whose

signature shall appear on any notes or coupons, shall cease to be such officer before the delivery of such notes, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. Notwithstanding any of the other provisions of this Article or any recitals in any notes issued under the provisions of this Article, all such notes shall be deemed to be negotiable instruments under the laws of this State, subject only to the provisions for registration in any resolution authorizing the issuance of such notes or any trust agreement securing the bonds in anticipation of which such notes are being issued. The notes may be issued in coupon or registered form or both, as the Board may determine, and provision may be made for the registration of any coupon notes as to principal alone and also as to both principal and interest, and for the reconversion into coupon notes of any notes registered as to both principal and interest. The Board may sell such notes in such manner, at public or private sale, and for such price, as it may determine to be for the best interests of the Board, but no sale shall be made at a price so low as to require the payment of interest on the money received therefor at more than eight per centum (8%) per annum, computed with relation to the absolute maturity or maturities of the bonds in accordance with standard tables of bond values, excluding, however, from such computation the amount of any premium to be paid on redemption of any notes prior to maturity.

The proceeds of the notes of each issue shall be used solely for the purpose for which the bonds in anticipation of which such notes are being issued shall have been authorized, and such note proceeds shall be disbursed in such manner and under such restrictions, if any, as the Board may provide in the resolution authorizing the issuance of such notes or bonds or in the trust agreement securing such bonds.

The resolution providing for the issuance of notes, and any trust agreement securing the bonds in anticipation of which such notes are being authorized, may also contain such limitations upon the issuance of additional notes as the Board may deem proper, and such additional notes shall be issued under such restrictions and limitations as may be prescribed by such resolution or trust agreement. The Board may also provide for the replacement of any notes which shall become mutilated or be destroyed or lost.

Except as herein otherwise provided, notes may be issued under this Article and other powers vested in the Board under this Article may be exercised by the Board without obtaining the consent of any department, division, commission, board, bureau or agency of the State and without any other proceedings or the happening of any other conditions or things than those proceedings, conditions or things which are specifically required by this Article.

Unless the context shall otherwise indicate, the word "bonds," wherever used in this Article, shall be deemed and construed to include the words "bond anticipation notes." (1963, c. 847, s. 5; 1969, c. 1158, s. 2; 1971, c. 511, s. 2; 1973, c. 662.)

Editor's Note. — The 1973 amendment added the last five paragraphs of the section.

§ 116-192. Trust agreement; money received deemed trust funds; insurance; remedies. — In the discretion of the Board and subject to the approval of the Advisory Budget Commission, any revenue bonds issued under this Article may be secured by a trust agreement by and between the Board and a corporate trustee (or trustees) which may be any trust company or bank having the powers of a trust company within or without the State. Such trust agreement or the resolution providing for the issuance of such bonds may pledge or assign the revenues to be received, but shall not convey or mortgage any project or

projects or any existing facilities or any part thereof. Such trust agreement or resolution providing for the issuance of such bonds may contain such provisions for protecting and enforcing the rights and remedies of the holders of such bonds as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the Board in relation to the acquisition, construction or provision of any project or projects, the maintenance, repair, operation and insurance of any project or projects and any existing facilities, student fees and admission fees and charges and other fees, rents and charges to be fixed and collected, and the custody, safeguarding and application of all moneys. It shall be lawful for any bank or trust company incorporated under the laws of the State which may act as depositary of the proceeds of bonds or of revenues to furnish such indemnifying bonds or to pledge such securities as may be required by the Board. Any such trust agreement or resolution may set forth the rights and remedies of the holders of the bonds and the rights, remedies and immunities of the trustee or trustees, if any, and may restrict the individual right of action by such holders. In addition to the foregoing, any such trust agreement or resolution may contain such other provisions as the Board may deem reasonable and proper for the security of such holders. All expenses incurred in carrying out the provisions of such trust agreement or resolution may be treated as a part of the cost of the project or projects for which such bonds are issued or as an expense of operation of such project or projects, as the case may be.

All moneys received pursuant to the authority of this Article, whether as proceeds from the sale of bonds or as revenues, shall be deemed to be trust funds to be held and applied solely as provided in this Article. The Board may provide for the payment of the proceeds of the sale of the bonds and the revenues, or part thereof, to such officer, board or depositary as it may designate for the custody thereof, and for the method of disbursement thereof, with such safeguards and restrictions as it may determine. Any officer with whom, or any bank or trust company with which, such moneys shall be deposited shall act as trustee of such moneys and shall hold and apply the same for the purposes hereof, subject to such requirements as are provided in this Article and in the resolution or trust agreement authorizing or securing such bonds.

Notwithstanding the provisions of any other law the Board may carry insurance on any project or projects and any existing facilities in such amounts and covering such risks as it may deem advisable.

Any holder of bonds issued under this Article or of any of the coupons appertaining thereto, and the trustee or trustees under any trust agreement, except to the extent the rights herein given may be restricted by such trust agreement or the resolution authorizing the issuance of such bonds, may, either at law or in equity, by suit, action, mandamus or other proceedings, protect and enforce any and all rights under the laws of the State or granted hereunder or under such trust agreement or resolution, and may enforce and compel the performance of all duties required by this Article or by such trust agreement or resolution to be performed by the Board or by any officer thereof, including the fixing, charging and collecting of fees, rents and charges. (1963, c. 847, s. 6.)

§ 116-193. Fixing fees, rents and charges; sinking fund. — For the purpose of aiding in the acquisition, construction or provision of any project and the maintenance, repair and operation of any project or any existing facilities, the Board is authorized to fix, revise from time to time, charge and collect from students enrolled at the institution under its jurisdiction such student fee or fees for such privileges and services and in such amount or amounts as the Board shall determine, and to fix, revise from time to time, charge and collect other fees, rents and charges for the use of and for the services furnished or to be furnished by any project or projects and any existing facilities, or any portion

thereof, and admission fees for athletic games and other public events, and to contract with any person, partnership, association or corporation for the lease, use, occupancy or operation of, or for concessions in, any project or projects and any existing facilities, or any part thereof, and to fix the terms, conditions, fees, rents and charges for any such lease, use, occupancy, operation or concession. So long as bonds issued hereunder and payable therefrom are outstanding, such fees, rents and charges shall be so fixed and adjusted, with relation to other revenues available therefor, as to provide funds pursuant to the requirements of the resolution or trust agreement authorizing or securing such bonds at least sufficient with such other revenues, if any, (i) to pay the cost of maintaining, repairing and operating any project or projects and any existing facilities any part of the revenues of which are pledged to the payment of the bonds issued for such project or projects, (ii) to pay the principal of and the interest on such bonds as the same shall become due and payable, and (iii) to create and maintain reserves for such purposes. Such fees, rents and charges shall not be subject to supervision or regulation by any other commission, board, bureau or agency of the State. A sufficient amount of the revenues, except such part thereof as may be necessary to pay such cost of maintenance, repair and operation and to provide such reserves therefor and for renewals, replacements, extensions, enlargements and improvements as may be provided for in the resolution authorizing the issuance of such bonds or in the trust agreement securing the same, shall be set aside at such regular intervals as may be provided in such resolution or such trust agreement in a sinking fund which is hereby pledged to, and charged with, the payment of the principal of and the interest on such bonds as the same shall become due and the redemption price or the purchase price of bonds retired by call or purchase as therein provided. Such pledge shall be valid and binding from the time when the pledge is made, the fees, rents and charges and other revenues or other moneys so pledged and thereafter received by the Board shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the Board, irrespective of whether such parties have notice thereof. Neither the resolution nor any trust agreement by which a pledge is created need be filed or recorded except in the records of the Board. The use and disposition of moneys to the credit of such sinking fund shall be subject to the provisions of the resolution authorizing the issuance of such bonds or of the trust agreement securing the same. (1963, c. 847, s. 7.)

§ 116-194. Vesting powers in executive committee. — The Board may authorize its executive committee to sell any bonds which the Board has, with the approval of the Advisory Budget Commission, authorized to be issued under this Article in such manner and under such limitations or conditions as the Board shall prescribe and to perform such other functions under this Article as the Board shall determine. (1963, c. 847, s. 8.)

§ 116-195. Refunding bonds. — The Board is hereby authorized, subject to the approval of the Advisory Budget Commission, to issue from time to time revenue refunding bonds for the purpose of refunding any revenue bonds or revenue refunding bonds issued by the Board under Chapter 1289 of the 1955 Session Laws of North Carolina or under G.S. 116-175 to 116-185, inclusive, or under this Article, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds. The Board is further authorized, subject to the approval of the Advisory Budget Commission, to issue from time to time revenue refunding bonds for the combined purpose of (i) refunding any such revenue bonds or revenue refunding bonds issued by the Board under said Chapter 1289 or under said G.S. 116-175 to 116-185, inclusive, or under this Article, including the payment of any

redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds, and (ii) paying all or any part of the cost of acquiring or constructing any additional project or projects.

The issuance of such refunding bonds, the maturities and other details thereof, the rights and remedies of the holders thereof, and the rights, powers, privileges, duties and obligations of the Board with respect to the same, shall be governed by the foregoing provisions of this Article insofar as the same may be applicable. (1963, c. 847, s. 9.)

§ 116-196. Exemption from taxation; bonds eligible for investment or deposit. — Any bonds issued under this Article, including any of such bonds constituting a part of the surplus of any bank, trust company or other corporation, and the transfer of and the income from any such bonds (including any profit made on the sale thereof and all principal, interest and redemption premiums, if any) shall at all times be exempt from all taxes or assessment, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise, which are levied or assessed by the State or by any county, political subdivision, agency or other instrumentality of the State. Bonds issued by the Board under the provisions of this Article are hereby made securities in which all public officers and public bodies of the State and its political subdivisions, all insurance companies, trust companies, banking associations, investment companies, executors, administrators, trustees and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. Such bonds are hereby made securities which may properly and legally be deposited with and received by any State or municipal officer or any agency or political subdivision of the State for any purpose for which the deposit of bonds or obligations of the State is now or may hereafter be authorized by law. (1963, c. 847, s. 10.)

§ 116-197. Article provides additional and alternative method. — This Article shall be deemed to provide an additional and alternative method for the doing of the things authorized hereby and shall be regarded as supplemental and additional to powers conferred by other laws, including G.S. 116-175 to 116-185, inclusive, and shall not be regarded as in derogation of or as repealing any powers now existing under any other law, either general, special or local; provided, however, that the issuance of revenue bonds or revenue refunding bonds under the provisions of this Article need not comply with the requirements of any other law applicable to the issuance of bonds. (1963, c. 847, s. 11.)

§ 116-198. Inconsistent laws declared inapplicable. — All general, special or local laws, or parts thereof, inconsistent herewith are hereby declared to be inapplicable to the provisions of this Article. (1963, c. 847, s. 12.)

ARTICLE 22.

Visiting Speakers at State-Supported Institutions.

§ 116-199. Use of facilities for speaking purposes.—The board of trustees of each college or university which receives any State funds in support thereof, shall adopt and publish regulations governing the use of facilities of such college or university for speaking purposes by any person who:

(1) Is a known member of the Communist Party;

(2) Is known to advocate the overthrow of the Constitution of the United States or the State of North Carolina;

(3) Has pleaded the Fifth Amendment of the Constitution of the United States in refusing to answer any question, with respect to Communist or subversive connections, or activities, before any duly constituted

legislative committee, any judicial tribunal, or any executive or administrative board of the United States or any state. (1963, c. 1207, s. 1; 1965, Ex. Sess., c. 1, s. 1.)

Editor's Note. — For comment on the barring of speakers from State educational institutions, see 42 N.C.L. Rev. 179 (1963).

Constitutionality. — The 1965 enactment of this section and § 116-200, and the procedures and regulations adopted by the Board of Trustees of the University of North Carolina on February 28, 1966, pursuant to these statutes, are facially unconstitutional because of vagueness. This is true even though the statutes and regulations, unlike their 1963 counterparts, only regulate, rather than prohibit, the appearance of a special group of speakers. Dickson v. Sitterson, 280 F. Supp. 486 (M.D.N.C. 1968).

§ 116-200. Enforcement of Article. — Any such regulations shall be enforced by the board of trustees, or other governing authority, of such college or university, or by such administrative personnel as may be appointed therefor by the board of trustees or other governing authority of such college or university. (1963, c. 1207, s. 2; 1965, Ex. Sess., c. 1, s. 2.)

Constitutionality. — The 1965 enactment of this section and § 116-199, and the procedures and regulations adopted by the Board of Trustees of the University of North Carolina on February 28, 1966, pursuant to these statutes, are facially unconstitutional because of vagueness. This is true even though the statutes and regulations, unlike their 1963 counterparts, only regulate, rather than prohibit, the appearance of a special group of speakers. Dickson v. Sitterson, 280 F. Supp. 486 (M.D.N.C. 1968).

ARTICLE 23.

State Education Assistance Authority.

§ 116-201. Purpose and definitions. — (a) The purpose of this Article is to authorize a system of financial assistance, consisting of grants, loans, work-study or other employment, and other aids, for qualified residents of the State to enable them to obtain an education beyond the high school level by attending public or private educational institutions. The General Assembly has found and hereby declares that it is in the public interest and essential to the welfare and well-being of the inhabitants of the State and to the proper growth and development of the State to foster and provide financial assistance to residents of the State, properly qualified therefor, in order to help them to obtain an education beyond the high school level. The General Assembly has further found that many residents of the State who are fully qualified to enroll in appropriate educational institutions for furthering their education beyond the high school level lack the financial means and are unable, without financial assistance as authorized under this Article, to pay the cost of such education, with a consequent irreparable loss to the State of valuable talents vital to its welfare. The General Assembly has determined that the establishment of a proper system of financial assistance for such objective purpose serves a public purpose and is fully consistent with the long established policy of the State to encourage, promote and assist the education of the people of the State.

(b) As used in this Article the following terms shall have the following meanings unless the context indicates a contrary intent:

(1) "Act or undertaking" or "acts or undertakings" shall mean bonds of the Authority authorized to be issued under this Article;

(2) "Authority" shall mean the State Education Assistance Authority created by this Article or, if the Authority shall be abolished, the board, body, commission or agency succeeding to the principal functions thereof or on whom the powers given by this Article to the Authority shall be conferred by law;

(3) "Bond resolution" or "resolution" when used in relation to the issuance of bonds shall be deemed to mean either any such resolution or any trust agreement securing any bonds;
(4) "Bonds" or "revenue bonds" shall mean the bonds authorized to be issued by the Authority under this Article, which may consist of bonds, notes or other debt obligations evidencing an obligation to repay borrowed money and payable solely from revenues and other moneys of the Authority pledged therefor;
(5) "Eligible institution," with respect to loans shall have the same meaning as such term has in section 1085 of Title 20 of the United States Code;
(6) "Eligible institution," with respect to grants and work-study programs shall include all state-supported institutions of higher learning and all institutions organized and administered pursuant to Chapter 115A of the General Statutes and all private institutions as defined in subdivision (8) of this subsection;
(7) "Obligations" or "student obligations" shall mean student loan notes and other debt obligations evidencing loans to students which the Authority may take, acquire, buy, sell, endorse or guarantee under the provisions of this Article, and may include any direct or indirect interest in the whole or any part of any such notes or obligations;
(8) "Private institution" shall mean an institution other than a seminary, Bible school, Bible college or similar religious institution in this State that is not owned or operated by the State or any agency or political subdivision of the State or by any combination thereof, that offers post-high school education and is accredited by the Southern Association of Colleges and Schools, or in the case of institutions that are not eligible to be considered for such accreditation, accredited in such categories and by such nationally recognized accrediting agencies as the Authority may designate;
(9) "Student" shall mean a resident of the State, in accordance with definitions of residency that may from time to time be prescribed by the Board of Governors of the University of North Carolina and published in the residency manual of said Board, who, under regulations adopted by the Authority, has enrolled or will enroll in an eligible institution and who is making suitable progress in his education in accordance with standards acceptable to the Authority and who has not received a bachelor's degree, or qualified therefor, and is otherwise classified as an undergraduate under such regulations as the Authority may promulgate; and
(10) "Student loans" shall mean loans to residents of this State to aid them in pursuing their education beyond the high school level. (1965, c. 1180, s. 1; 1971, c. 392, s. 1; c. 1244, s. 14.)

Applied in Nicholson v. State Educ. Assistance Authority, 275 N.C. 439, 168 S.E.2d 401 (1969).

Cited in State Educ. Assistence Authority v. Bank of Statesville, 276 N.C. 576, 174 S.E.2d 551 (1970).

§ 116-202. Authority may buy and sell students' obligations; undertakings of Authority limited to revenues. — In order to facilitate the vocational and college education of residents of this State and to promote the industrial and economic development of the State, the State Education Assistance Authority (hereinafter created) is hereby authorized and empowered to buy and sell obligations of students attending institutions of higher education or post-secondary business, trade, technical, and other vocational schools, which obligations represent loans made to such students for the purpose of obtaining training or education.

No act or undertaking of the Authority shall be deemed to constitute a debt of the State or of any political subdivision thereof or a pledge of the faith and credit of the State or of any such political subdivision, but shall be payable solely from the funds of the Authority. All such acts and undertakings shall contain on the face thereof a statement to the effect that neither the State nor the Authority shall be obligated to pay the same or the interest thereon except from revenues of the Authority and that neither the faith and credit nor the taxing power of the State or of any political subdivision thereof is pledged to the payment of the principal of or the interest on such acts and undertakings.

All expenses incurred in carrying out the provisions of this Article shall be payable solely from funds provided under the provisions of this Article and no liability or obligation shall be incurred by the Authority hereunder beyond the extent to which moneys shall have been provided under the provisions of this Article. (1965, c. 1180, s. 1; 1967, c. 955, s. 1.)

Stated in State Educ. Assistance Authority v. Bank of Statesville, 276 N.C. 576, 174 S.E.2d 551 (1970).

§ 116-203. Authority created as subdivision of State; appointment, terms and removal of board of directors; officers; quorum; expenses and compensation of directors. — There is hereby created and constituted a political subdivision of the State to be known as the "State Education Assistance Authority." The exercise by the Authority of the powers conferred by this Article shall be deemed and held to be the performance of an essential governmental function.

The Authority shall be governed by a board of directors consisting of seven members, each of whom shall be appointed by the Governor. Two of the first members of the board appointed by the Governor shall be appointed for terms of one year, two for terms of two years, two for terms of three years, and one for a term of four years from the date of their appointment; and thereafter the members of the board shall be appointed for terms of four years. Vacancies in the membership of the board shall be filled by appointment of the Governor for the unexpired portion of the term. Members of the board shall be subject to removal from office in like manner as are State, county, town and district officers. Immediately after such appointment, the directors shall enter upon the performance of their duties. The board shall annually elect one of its members as chairman and another as vice-chairman, and shall also elect annually a secretary, or a secretary-treasurer, who may or may not be a member of the board. The chairman, or in his absence, the vice-chairman, shall preside at all meetings of the board. In the absence of both the chairman and vice-chairman, the board shall appoint a chairman pro tempore, who shall preside at such meetings. Four directors shall constitute a quorum for the transaction of the business of the Authority, and no vacancy in the membership of the board shall impair the right of a quorum to exercise all the rights and perform all the duties of the Authority. The members of the board shall be entitled to reimbursement for their expenses incurred in attendance upon the meetings of the board or while otherwise engaged in the discharge of their duties. Each member of the board shall also be paid the sum of twenty-five dollars ($25.00) per day for each day or portion thereof during which he is engaged in the performance of his duties. Such expenses and compensation shall be paid out of the treasury of the Authority upon vouchers signed by the chairman of the board or by such other person or persons as may be designated by the board for the purpose. (1965, c. 1180, s. 1.)

Quoted in State Educ. Assistance Authority v. Bank of Statesville, 276 N.C. 576, 174 S.E.2d 551 (1970).

§ 116-204. Powers of Authority. — The Authority is hereby authorized and empowered:

(1) To fix and revise from time to time and charge and collect fees for its acts and undertakings;

(2) To establish rules and regulations concerning its acts and undertakings;

(3) To acquire, hold and dispose of personal property in the exercise of its powers and the performance of its duties;

(4) To make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this Article;

(5) To employ, in its discretion, consultants, attorneys, accountants, and financial experts, superintendents, managers and such other employees and agents as may be necessary in its judgment, and to fix their compensation to be payable from funds made available to the Authority by law;

(6) To receive and accept from any federal or private agency, corporation, association or person grants to be expended in accomplishing the objectives of the Authority, and to receive and accept from the State, from any municipality, county or other political subdivision thereof and from any other source aid or contributions of either money, property, or other things of value, to be held, used and applied only for the purposes for which such grants and contributions may be made;

(7) To sue and to be sued; to have a seal and to alter the same at its pleasure; and to make and from time to time amend and repeal bylaws, rules and regulations not inconsistent with law to carry into effect the powers and purposes of the Authority;

(8) To do all other acts and things necessary or convenient to carry out the powers expressly granted in this Article; provided, however, that nothing in this Article shall be construed to empower the Authority to engage in the business of banking or insurance. (1965, c. 1180, s. 1.)

Quoted in State Educ. Assistance Authority v. Bank of Statesville, 276 N.C. 576, 174 S.E.2d 551 (1970).

§ 116-205. Title to property; use of State lands; offices. — (a) Title to any property acquired by the Authority shall be taken in the name of the Authority.

(b) The State hereby consents, subject to the approval of the Governor and Council of State, to the use of any other lands or property owned by the State, which are deemed by the Authority to be necessary for its purposes.

(c) The Authority may establish such offices in state-owned or rented structures as it deems appropriate for its purposes. (1965, c. 1180, s. 1.)

§ 116-206. Acquisition of obligations. — With the proceeds of bonds or any other funds of the Authority available therefor, the Authority may acquire from any bank, insurance company or other lending institution, student obligations, or any interest or participation therein in such amount, at such price or prices and upon such terms and conditions as the Authority shall determine to be in the public interest and desirable to carry out the purposes of this Article. The Authority shall take such actions and require the execution of such instruments deemed appropriate by it to permit the recovery, in connection with any such obligations or any interest or participation therein acquired by the Authority,

of the amount to which the Authority may be rightfully entitled, and otherwise to enforce and protect its rights and interest thereto. (1965, c. 1180, s. 1; 1967, c. 955, s. 2; 1971, c. 392, s. 2.)

Quoted in State Educ. Assistance Authority v. Bank of Statesville, 276 N.C. 576, 174 S.E.2d 551 (1970).

§ 116-207. Terms of acquisitions. — The Authority shall prescribe the terms, conditions and limitations upon which it will acquire a contingent or direct interest in any obligation and such terms, conditions and limitations shall include, but without limiting the generality hereof, the interest rate payable upon such obligations, the maturities thereof, the terms for payment of principal and interest, applicable life or other insurance which may be required in connection with any such obligation and who shall pay the premiums thereon, the safekeeping of assets pledged to secure any such undertaking, and any and all matters in connection with the foregoing as will protect the assets of the Authority. (1965, c. 1180, s. 1.)

§ 116-208. Construction of Article. — The provisions of this Article shall be liberally construed to the end that its beneficial purposes may be effectuated. (1965, c. 1180, s. 1.)

§ 116-209. Trust fund established; use and investment of fund; duties of State Treasurer. — The appropriation made to the Authority under this Article shall be used exclusively for the purpose of acquiring contingent or vested rights in obligations which it may acquire under this Article; such appropriations, payments, revenue and interest as well as other income received in connection with such obligations is hereby established as a trust fund. Such fund shall be used for the purposes of the Authority other than maintenance and operation.

The maintenance and operating expenses of the Authority shall be paid from funds specifically appropriated for such purposes. No part of the trust fund established under this section shall be expended for such purposes.

The Authority shall be the trustee of the trust fund hereby created and shall have full power to invest and reinvest such funds, subject to the limitation that no investment shall be made, except upon the exercise of bona fide discretion, in securities which, at the time of making the investment, are, by statute, permitted for the investment of reserves of domestic life insurance companies. Subject to such limitation, the Authority shall have full power to hold, purchase, sell, assign, transfer or dispose of, any of the securities or investments in which any of the funds created herein have been invested, as well as of the proceeds of such investments and any moneys belonging to such funds.

In lieu of exercising all of the powers hereunder with respect to the investment and reinvestment of the several funds, the Authority may delegate such powers to the State Treasurer, in which event the State Treasurer shall exercise the investment powers as prescribed herein.

The State Treasurer shall be the custodian of the assets of the Authority. All payments from the accounts thereof shall be made by him issued upon vouchers signed by such persons as are designated by the Authority. A duly attested copy of a resolution of the Authority designating such persons and bearing on its face the specimen signatures of such persons shall be filed with the State Treasurer as his authority for issuing warrants upon such vouchers. (1965, c. 1180, s. 1.)

Editor's Note. — The appropriation referred to in this section is authorized to be made from the Contingency and Emergency Fund by s. 2 of the act adding this Article.

Taxpayer Has No Standing to Seek Injunction Restraining Acts of Authority. — Since issuance of tax-exempt revenue bonds by the State Education Assistance Authority for pur-

pose of financing loans to college students does not pledge the credit of the State or of any political subdivision thereof, a taxpayer can suffer no injury from the issuance of the bonds and has no interest therein except his general interest as a member of the public in good government pursuant to the North Carolina Constitution, and, consequently, a taxpayer has no standing to seek an injunction restraining actions of the Authority and its fiscal agent relating to the issuance of the bonds and the expenditure of the proceeds thereof. Nicholson v. State Educ. Assistance Authority, 275 N.C. 439, 168 S.E.2d 401 (1969).

Allegation Insufficient Basis for Injunctive Relief. — The allegation that, by expressing its intent to issue a further series of bonds, the Authority has indicated that "additional tax funds will be expended" unless enjoined is not sufficient basis for injunctive relief, since this allegation is consistent with a contemplated use of funds appropriated from tax revenues for "lawful functions" of the Authority, such as the payment of salaries and expenses of employees engaged in the performance of functions authorized by this section. Nicholson v. State Educ. Assistance Authority, 275 N.C. 439, 168 S.E.2d 401 (1969).

Quoted in State Educ. Assistance Authority v. Bank of Statesville, 276 N.C. 576, 174 S.E.2d 551 (1970).

§ 116-209.1. Provisions in conflict. — Any of the foregoing provisions of this Article which shall be in conflict with the provisions hereinbelow set forth shall be repealed to the extent of such conflict. (1967, c. 1177.)

Cited in State Educ. Assistance Authority v. Bank of Statesville, 276 N.C. 576, 174 S.E.2d 551 (1970).

§ 116-209.2. Reserves. — The Authority may provide in any resolution authorizing the issuance of bonds or any trust agreement securing any bonds that proceeds of such bonds may be used to establish reserve accounts in any trustee or banking institution or otherwise as determined by the Authority, for securing such bonds and facilitating the making of student loans and acquiring student obligations, to provide for the payment of interest on such bonds for such period of time as the Authority shall determine, and for such other purposes as will facilitate the issuance of bonds at rates of interest and upon terms deemed reasonable by the Authority and will, in the Authority's judgment, facilitate carrying out the purposes of this Article. (1967, c. 1177; 1971, c. 392, s. 3.)

§ 116-209.3. Additional powers. — The Authority is authorized to develop and administer programs and perform all functions necessary or convenient to promote and facilitate the making and insuring of student loans and providing such other student loan assistance and services as the Authority shall deem necessary or desirable for carrying out the purposes of this Article and for qualifying for loans, grants, insurance and other benefits and assistance under any program of the United States now or hereafter authorized fostering student loans. There shall be established and maintained a trust fund which shall be designated "State Education Assistance Authority Loan Fund" (the "Loan Fund") which may be used by the Authority in making student loans directly or through agents or independent contractors, insuring student loans, acquiring, purchasing, endorsing or guaranteeing promissory notes, contracts, obligations or other legal instruments evidencing student loans made by banks, educational institutions, nonprofit corporations or other lenders, and for defraying the expenses of operation and administration of the Authority for which other funds are not available to the Authority. There shall be deposited to the credit of such Loan Fund the proceeds (exclusive of accrued interest) derived from the sale of its revenue bonds by the Authority and any other moneys made available to the Authority for the making or insuring of student loans or the purchase of obligations. There shall also be deposited to the credit of the Loan Fund surplus

funds from time to time transferred by the Authority from the sinking fund. Such Loan Fund shall be maintained as a revolving fund.

In lieu of or in addition to the Loan Fund, the Authority may provide in any resolution authorizing the issuance of bonds or any trust agreement securing such bonds that any other trust funds or accounts may be established as may be deemed necessary or convenient for securing the bonds or for making student loans, acquiring obligations or otherwise carrying out its other powers under this Article, and there may be deposited to the credit of any such fund or account proceeds of bonds or other money available to the Authority for the purposes to be served by such fund or account. (1967, c. 1177; 1971, c. 392, s. 4.)

Sections 116-209.1 to 116-209.15 do not unconstitutionally authorize use of public funds. State Educ. Assistance Authority v. Bank of Statesville, 276 N.C. 576, 174 S.E.2d 551 (1970).

It is expected that a student loan will inure to the private benefit of the person who obtains it. It is equally true that the education provided throughout the entire school system is intended to inure to the benefit of the individual who obtains it. However, the fact that the individual obtains a private benefit cannot be considered sufficient ground to defeat the execution of the paramount public purpose of encouraging education. State Educ. Assistance Authority v. Bank of Statesville, 276 N.C. 576, 174 S.E.2d 551 (1970).

Whether the student loan program is wise or unwise is for determination by the General Assembly. State Educ. Assistance Authority v. Bank of Statesville, 276 N.C. 576, 174 S.E.2d 551 (1970).

Assistance of Federal Government Is Prerequisite to Functioning of Student Loan Program. — The assistance of the federal government and coordination with its program are prerequisite to the functioning of the North Carolina student loan program. State Educ. Assistance Authority v. Bank of Statesville, 276 N.C. 576, 174 S.E.2d 551 (1970).

And Only Loans Qualifying for Assistance under Federal Statutes May Be Made. — The only student loans the Authority is authorized to make or purchase are student loans which qualify under the federal statutes for federal assistance in respect of interest subsidy and guaranty. State Educ. Assistance Authority v. Bank of Statesville, 276 N.C. 576, 174 S.E.2d 551 (1970).

It is implicit in the provisions of §§ 116-209.1 to 116-209.15 that the General Assembly contemplated and intended that no loans would be made from the proceeds from the sale of tax-exempt revenue bonds except student loans made in compliance with the standards prescribed by federal legislation and therefore qualified for assistance. Seemingly, the General Assembly realized that its specification of more precise standards for "student loans" might impede the functioning of the Authority and render it unable to qualify from time to time for the federal assistance upon which its program depended. State Educ. Assistance Authority v. Bank of Statesville, 276 N.C. 576, 174 S.E.2d 551 (1970).

The provisions of this section and § 116-209.6 disclose that the General Assembly is well aware of the federal, State and private programs of low-interest insured loans to students in institutions of higher education and other post-secondary schools. State Educ. Assistance Authority v. Bank of Statesville, 276 N.C. 576, 174 S.E.2d 551 (1970).

Borrowers Unable to Make Payment until Completion of Education. — Persons who obtain "student loans" are unable to make payment on account of interest or principal until completion of their education by graduation or otherwise. State Educ. Assistance Authority v. Bank of Statesville, 276 N.C. 576, 174 S.E.2d 551 (1970).

§ 116-209.4. Authority to issue bonds. — The Authority is hereby authorized to provide for the issuance, at one time or from time to time, of revenue bonds of the Authority in an aggregate principal amount outstanding at any time of not exceeding fifty million dollars ($50,000,000). The bonds shall be designated, subject to such additions or changes as the Authority deems advisable, "State Education Assistance Authority Revenue Bonds, Series . . . . . ," inserting in the blank space a letter identifying the particular series of bonds.

The principal of and the interest on such bonds shall be payable solely from the funds herein provided for such payment. The bonds of each issue shall be dated, shall bear interest at such rate or rates, shall mature at such time or times not exceeding 30 years from their date or dates, as may be determined by the

Authority, and may be made redeemable before maturity, at the option of the Authority, at such price or prices and under such terms and conditions as may be fixed by the Authority prior to the issuance of the bonds. Prior to the preparation of definitive bonds, the Authority may, under like restrictions, issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery. The Authority may also provide for the replacement of any bonds which shall become mutilated or shall be destroyed or lost. The Authority shall determine the form and the manner of execution of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the State. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before the delivery of such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. The Authority may also provide for the authentication of the bonds by a fiscal agent. The bonds may be issued in coupon or in registered form, or both, as the Authority may determine, and provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest, and for the interchange of registered and coupon bonds. The Authority may sell such bonds in such manner, either at public or private sale, and for such price as it may determine will best effectuate the purposes of this Article.

The Authority is authorized to provide in any resolution authorizing the issuance of bonds for pledging or assigning as security for its revenue bonds, subject to any prior pledge or assignment, and for deposit to the credit of the sinking fund, any or all of its income, receipts, funds or other assets, exclusive of bond proceeds and other funds required to be deposited to the credit of the Loan Fund, of whatsoever kind from time to time acquired or owned by the Authority, including all donations, grants and other money or property made available to it, payments received on student loans, such as principal, interest and penalties, if any, premiums on student loan insurance, fees, charges and other income derived from services rendered or otherwise, proceeds of property or insurance, earnings and profits on investments of funds and from sales, purchases, endorsements or guarantees of obligations, as defined in G.S. 116-201 hereof, and other securities and instruments, contract rights, any funds, rights, insurance or other benefits acquired pursuant to any federal law or contract to the extent not in conflict therewith, money recovered through the enforcement of any remedies or rights, and any other funds or things of value which in the determination of the Authority may enhance the marketability of its revenue bonds. Money in the sinking fund shall be disbursed in such manner and under such restrictions as the Authority may provide in the resolution authorizing the issuance of such bonds. Unless otherwise provided in the bond resolution, the revenue bonds at any time issued hereunder shall be entitled to payment from the sinking fund without preference or priority of the bonds first issued. Bonds may be issued under the provisions of this Article without obtaining, except as otherwise expressly provided in this Article, the consent of any department, division, commission, board, body, bureau or agency of the State, and without any other proceedings or the happening of any conditions or things other than those proceedings, conditions or things which are specifically required by this Article and the provisions of the resolution authorizing the issuance of such bonds.

The Authority is authorized to provide by resolution for the issuance of revenue refunding bonds of the Authority for the purpose of refunding any

bonds then outstanding which shall have been issued under the provisions of this Article, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds, and, if deemed advisable by the Authority, for making student loans or acquiring obligations under this Article. The issuance of such revenue refunding bonds, the maturities and other details thereof, the rights of the holders thereof, and the rights, duties and obligations of the Authority in respect to the same shall be governed by the provisions of this Article which relate to the issuance of revenue bonds insofar as such provisions may be appropriate. Revenue refunding bonds issued under this section may be sold or exchanged for outstanding bonds issued under this Article and, if sold, the proceeds thereof may be applied, in addition to any other authorized purposes, to the purchase, redemption or payment of such outstanding bonds. (1967, c. 1177; 1971, c. 392, ss. 5-7.)

Constitutionality. — The people of North Carolina constitute the State's greatest resource. Where bond proceeds are to be used solely to make loans to meritorious North Carolinians of slender means and thereby minimize the number of qualified persons whose education or training is interrupted or abandoned for lack of funds, the bond proceeds are used for a public purpose when used to make such loans. State Educ. Assistance Authority v. Bank of Statesville, 276 N.C. 576, 174 S.E.2d 551 (1970).

§ 116-209.5. Bond resolution. — The resolution providing for the issuance of such bonds may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the Authority in relation to the purchase or sale of obligations, the making of student loans, the insurance of student loans, the fees, charges and premiums to be fixed and collected, the terms and conditions for the issuance of additional bonds and the custody, safeguarding and application of all moneys. It shall be lawful for any bank or trust company incorporated under the laws of the State which may act as depositary of the proceeds of bonds, revenues or other money hereunder to furnish such indemnifying bonds or to pledge such securities as may be required by the Authority. Any such resolution may set forth the rights and remedies of the bondholders and may restrict the individual right of action by bondholders. All expenses incurred in carrying out the provisions of such resolution may be treated as a part of the cost of administering this Article and may be payable, together with other expenses of operation and administration under this Article incurred by the Authority, from the Loan Fund.

In the discretion of the Authority, any bonds issued under the provisions of this Article may be secured by a trust agreement by and between the Authority and a corporate trustee, which may be any trust company or bank having powers of a trust company within or without the State. Such trust agreement or the resolution providing for the issuance of such bonds may pledge or assign the fees, penalties, charges, proceeds from collections, grants, subsidies, donations and other funds and revenues to be received therefor. Such trust agreement or resolution providing for the issuance of such bonds may contain such provisions for protecting and enforcing the rights and remedies of the holders of such bonds as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the Authority in relation to student loans, the acquisition of obligations, insurance, the fees, penalties and other charges to be fixed and collected, the sale or purchase of obligations or any part thereof, or other property, the terms and conditions for the issuance of additional bonds, and the custody, safeguarding and application of all moneys. It shall be lawful for any bank or trust company incorporated under the laws of the State which may act as depositary of the proceeds of bonds, revenues or other money

hereunder to furnish such indemnifying bonds or to pledge such securities as may be required by the Authority. Any such trust agreement or resolution may set forth the rights and remedies of the bondholders and of the trustee, and may restrict the individual right of action by bondholders. In addition to the foregoing, any such trust agreement or resolution may contain such other provisions as the Authority may deem reasonable and proper for the security of the bondholders. All expenses incurred in carrying out the provisions of such trust agreement or resolution may be treated as a part of the cost of carrying out the purposes for which such bonds shall be issued.

In addition to all other powers granted to the Authority by this Article, the Authority is hereby authorized to pledge to the payment of the principal of and the interest on any bonds under the provisions of this Article any moneys received or to be received by it under any appropriation made to it by the General Assembly, unless the appropriation is restricted by the General Assembly to specific purposes of the Authority or such pledge is prohibited by the law making such appropriation; provided, however, that nothing herein shall be construed to obligate the General Assembly to make any such appropriation. (1967, c. 1177; 1971, c. 392, s. 8.)

§ 116-209.6. Revenues. — The Authority is authorized to fix and collect fees, charges, interest and premiums for making or insuring student loans, purchasing, endorsing or guaranteeing obligations and any other services performed under this Article. The Authority is further authorized to contract with the United States of America or any agency or officer thereof and with any person, partnership, association, banking institution or other corporation respecting the carrying out of the Authority's functions under this Article. The Authority shall at all times endeavor to fix and collect such fees, charges, receipts, premiums and other income so as to have available in the sinking fund at all times an amount which, together with any other funds made available therefor, shall be sufficient to pay the principal of and the interest on such bonds as the same shall become due and payable and to create reserves for such purposes. Money in the sinking fund, except such part thereof as may be necessary to provide such reserves for the bonds as may be provided for in the resolution authorizing the issuance of such bonds, shall be set aside in the sinking fund at such regular intervals as may be provided in such resolution and is hereby pledged to, and charged with, the payment of the principal of and the interest on such bonds as the same shall become due and the redemption price or the purchase price of bonds retired by call or purchase as therein provided. Such pledge shall be valid and binding from the time when the pledge is made. The fees, charges, receipts, proceeds and other revenues and moneys so pledged and thereafter received by the Authority shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the Authority, irrespective of whether such parties have notice thereof. The resolution by which a pledge is created need not be filed or recorded except in the records of the Authority. The use and disposition of money to the credit of the sinking fund shall be subject to the provisions of the resolution authorizing the issuance of such bonds. Any such resolution may, in the discretion of the Authority, provide for the transfer of surplus money in the sinking fund to the credit of the Loan Fund. Except as may otherwise be provided in such resolution, such sinking fund shall be a fund for all such bonds without distinction or priority of one over another. (1967, c. 1177.)

Cross Reference. — See note to § 116-209.3.

§ 116-209.7. Trust funds. — Notwithstanding any other provisions of law to the contrary, all money received pursuant to the authority of the Article, whether as proceeds from the sale of bonds, sale of property or insurance, or as payments of student loans, whether principal, interest or penalties, if any, thereon, or as insurance premiums, or from the purchase or sale of obligations, or as any other receipts or revenues derived hereunder, shall be deemed to be trust funds to be held and applied solely as provided in this Article. The resolution authorizing the bonds of any issue may provide that any of such money may be temporarily invested pending the disbursement thereof and shall provide that any officer with whom, or any bank or trust company with which, such money shall be deposited shall act as trustee of such money and shall hold and apply the same for the purposes hereof, subject to such regulations as this Article and such resolution may provide. (1967, c. 1177.)

§ 116-209.8. Remedies. — Any holder of bonds issued under the provisions of this Article or any of the coupons appertaining thereto, except to the extent the rights herein given may be restricted by such resolution authorizing the issuance of such bonds, may either at law or in equity, by suit, action, mandamus or other proceeding, protect and enforce any and all rights under the laws of the State or granted hereunder or under such resolution authorizing the issuance of such bonds, or under any contract executed by the Authority pursuant to this Article, and may enforce and compel the performance of all duties required by this Article or by such resolution to be performed by the Authority or by any officer thereof, including the fixing, charging and collecting of fees, charges and premiums and the collection of principal, interest and penalties, if any, on student loans or obligations evidencing such loans. The Authority may provide in any trust agreement securing the bonds that any such rights may be enforced for and on behalf of the holders of bonds by the trustee under such trust agreement. (1967, c. 1177; 1971, c. 392, s. 9.)

§ 116-209.9. Negotiability of bonds. — All bonds issued under the provisions of this Article shall have and are hereby declared to have all the qualities and incidents, including negotiability, of investment securities under the Uniform Commercial Code of the State but no provision of such Code respecting the filing of a financial statement to perfect a security interest shall be deemed applicable to or necessary for any security interest created in connection with the issuance of any such bonds. (1967, c. 1177; 1971, c. 392, s. 10.)

§ 116-209.10. Bonds eligible for investment. — Bonds issued by the Authority under the provisions of this Article are hereby made securities in which all public officers and public bodies of the State and its political subdivisions, all insurance companies, trust companies, banking associations, investment companies, executors, administrators, trustees and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. Such bonds are hereby made securities which may properly and legally be deposited with and received by any State or municipal officer or any agency or political subdivision of the State for any purpose for which the deposit of bonds or obligations of the State is now or may hereafter be authorized by law. (1967, c. 1177.)

Whether tax-exempt revenue bonds issued under § 116-209.4 should be approved for investment by fiduciaries and for deposit "for any purpose for which the deposit of bonds or obligations of the State is now or may hereafter be authorized by law," as set forth in this section, is for determination by the General Assembly. Whether the purchase of these bonds is wise or unwise is for determination by the investor. State Educ. Assistance Authority v. Bank of Statesville, 276 N.C. 576, 174 S.E.2d 551 (1970).

§ 116-209.11. Additional pledge. — Notwithstanding any other provision to the contrary herein, the Authority is hereby authorized to pledge as security for any bonds issued hereunder any contract between the Authority and the United States of America under which the United States agrees to make funds available to the Authority for any of the purposes of this Article, to insure or guarantee the payment of interest or principal on student loans, or otherwise to aid in promoting or facilitating student loans. (1967, c. 1177.)

§ 116-209.12. Credit of State not pledged. — Bonds issued under the provisions of this Article shall not be deemed to constitute a debt, liability or obligation of the State or of any political subdivision thereof or a pledge of the faith and credit of the State or of any such political subdivision, but shall be payable solely from the revenues and other funds provided therefor. Each bond issued under this Article shall contain on the face thereof a statement to the effect that the Authority shall not be obligated to pay the same nor the interest thereon except from the revenues, proceeds and other funds pledged therefor and that neither the faith and credit nor the taxing power of the State or of any political subdivision thereof is pledged to the payment of the principal of or the interest on such bonds. Expenses incurred by the Authority in carrying out the provisions of this Article may be made payable from funds provided pursuant to this Article and no liability or obligation shall be incurred by the Authority hereunder beyond the extent to which moneys shall have been so provided. (1967, c. 1177.)

Taxpayer Has No Standing to Seek Injunction Restraining Acts of Authority. — See same catchline in note under § 116-209.

Quoted in State Educ. Assistance Authority v. Bank of Statesville, 276 N.C. 576, 174 S.E.2d 551 (1970).

§ 116-209.13. Tax exemption. — The exercise of the powers granted by this Article in all respects will be for the benefit of the people of the State, for their well-being and prosperity and for the improvement of their social and economic conditions, and the Authority shall not be required to pay any taxes on any property owned by the Authority under the provisions of this Article or upon the income therefrom, and the bonds issued under the provisions of this Article, their transfer and the income therefrom (including any profit made on the sale thereof), shall at all times be free from taxation by the State or any local unit or political subdivision or other instrumentality of the State, excepting inheritance or gift taxes. (1967, c. 1177.)

Constitutionality. — See State Educ. Assistance Authority v. Bank of Statesville, 276 N.C. 576, 174 S.E.2d 551 (1970).

Cited in Stanley v. Department of Conservation & Dev., 284 N.C. 15, 199 S.E.2d 641 (1973).

§ 116-209.14. Annual reports. — The Authority shall, promptly following the close of each fiscal year, submit an annual report of its activities for the preceding year to the Governor and the General Assembly. Each such report shall set forth a complete operating and financial statement covering the operations of the Authority during such year. The Authority shall cause an audit of its books and accounts to be made at least once in each year by the State Auditor or by certified public accountants. (1967, c. 1177.)

§ 116-209.15. Merger of trust fund. — The Authority may merge into the Loan Fund the trust fund established pursuant to G.S. 116-209 hereof and may transfer from such trust fund to the credit of the Loan Fund all money, investments and other assets and resources credited to such trust fund, for application and use in accordance with the provisions of this Article pertaining

to the Loan Fund, including the power to pay expenses of the Authority from the Loan Fund to the extent that other funds are not available therefor. (1967, c. 1177.)

Applied in Nicholson v. State Educ. Assistance Authority, 275 N.C. 439, 168 S.E.2d 401 (1969).

§ 116-209.16. Other powers; criteria. — The Authority, in addition to all the powers more specifically vested hereunder, shall have all other powers necessary or convenient to carry out and effectuate the purposes and provisions of this Article, including the power to receive, administer and comply with the conditions and requirements respecting any gift, grant or donation of any property or money, any insurance or guarantee of any student loan or student obligations, any loans, advances, contributions, interest subsidies or any other assistance from any federal or State agency or other entity; to pledge or assign any money, charges, fees or other revenues and any proceeds derived by the Authority from any student loans, obligations, sales of property, insurance or other sources; to borrow money and to issue in evidence thereof revenue bonds of the Authority for the purposes of this Article and to issue revenue refunding bonds; to conduct studies and surveys respecting the needs for financial assistance of residents of the State respecting education beyond the high school level.

In carrying out the powers vested and the responsibilities imposed under this Article, the Authority shall be guided by and shall observe the following criteria and requirements, the determination of the Authority as to compliance with such criteria and requirements being final and conclusive:

(1) Any student loan, grant or other assistance provided by the Authority to any student shall be necessary to enable the student to pursue his education above the high school level; and

(2) No student loan, grant or other financial assistance shall be provided to any student by the Authority except in conformity with the provisions of this Article and to carry out the purposes hereof.

The Authority shall by rules and regulations prescribe other conditions, criteria and requirements that it shall deem necessary or desirable for providing financial assistance to students under this Article upon a fair and equitable basis, giving due regard to the needs and qualifications of the students and to the purposes of this Article. (1971, c. 392, s. 11.)

§ 116-209.17. Establishment of student assistance program. — The Authority is authorized, in addition to all other powers and duties vested or imposed under this Article, to establish and administer a statewide student assistance program for the purpose of removing, insofar as may be possible, the financial barriers to education beyond the high school level for needy North Carolina undergraduate students at public or private institutions in this State. This objective shall be accomplished through a comprehensive program under which the financial ability of each student and of his family, under standards prescribed by the Authority, is measured against the reasonable costs, as determined by the Authority, of the educational program which the student proposes to pursue. Needs of students for financial assistance shall, to the extent of the availability of funds from federal, State, institutional or other sources, be met through work-study programs, loans, grants and out-of-term employment, or a combination of these forms of assistance. No student shall be eligible to receive benefits under this student assistance program for a total of more than 45 months of full-time, post-high school level education. (1971, c. 392, s. 11.)

§ 116-209.18. Powers of Authority to administer student assistance program. — In order to accomplish the purposes of this Article the Authority is authorized:

(1) To receive from the general fund or other sources such sums as the General Assembly may authorize from time to time for such purposes, and to receive from any other donor, public or private, such sums as may be made available, and to cause such sums to be disbursed for the purposes for which they have been provided;

(2) To establish such criteria as the Authority shall deem necessary or desirable for determining the need of students for grants under this Article, as opposed to other forms of financial assistance, and for deciding who shall receive grants;

(3) To prescribe the form and to regulate the submission of applications for assistance and to prescribe the procedures for considering and approving such applications;

(4) To provide for the making of, and to make, grants under this Article under such terms and conditions as the Authority shall deem advisable;

(5) To encourage educational institutions to increase the resources available for financial assistance; to prescribe such formulas for institutional maintenance of effort as the Authority may determine to be consistent with the purposes of this Article;

(6) To provide by contract for the administration of all or any portion of the student assistance program by nonprofit organizations or corporations, pursuant to regulations and criteria established by the Authority;

(7) To serve, on designation by the Governor, or as may otherwise be provided by federal law, as the State agency to administer such statewide programs of student assistance as shall be established from time to time under federal law; and

(8) To have all other powers and authority necessary to carry out the purposes of the student assistance program, including, without limitation, all the powers given to the Authority by G.S. 116-204 and by other provisions of the General Statutes. (1971, c. 392, s. 11.)

§ 116-209.19. Grants to students. — The Authority is authorized to make grants to students enrolled or to be enrolled in eligible institutions in North Carolina out of such money as from time to time may be appropriated by the State or as may otherwise be available to the Authority for such grants. The Authority, subject to the provisions of this Article and any applicable appropriation act, shall adopt rules, regulations and procedures for determining the needs of the respective students for grants and for the purpose of making such grants. The amount of any grant made by the Authority to any student, whether enrolled or to be enrolled in any private institution or any tax-supported public institution, shall be determined by the Authority upon the basis of substantially similar standards and guides that shall be set forth in the Authority's rules, regulations and procedures; provided, however, that grants made in any fiscal year to students enrolled or to be enrolled in private institutions may be increased to compensate, in whole or in part, for the average annual State appropriated tuition subsidy for such fiscal year, determined as provided herein. The average annual State appropriated subsidy for each fiscal year shall be determined by the Advisory Budget Commission, after consultation with the State Budget Officer, Board of Governors of the University of North Carolina and the Authority, for each of the two categories of tax-supported institutions, being (i) institutions, presently 16, that provide education of the collegiate grade and grant baccalaureate degrees and (ii) institutions, such as community colleges and technical institutes created and existing under Chapter 115A of the General Statutes. The average annual State appropriated subsidy for each of such two categories of institutions shall mean the amount of the total

appropriations of the State for the respective fiscal years under the current operations budgets, pursuant to the Executive Budget Act reasonably allocable to undergraduate students enrolled in such institutions exclusive of the Division of Health Affairs of the University of North Carolina and the North Carolina School of the Arts for all institutions in such category, all as shall be determined by the Advisory Budget Commission after consultation as above provided, divided by the budgeted number of North Carolina undergraduate students to be enrolled in such fiscal year.

The Authority in determining the needs of students for grants, may give consideration to, among other factors, the amount of other financial assistance that may be available to such students such as nonrepayable awards under the educational opportunity grant program and Health Professions Education Assistance Act. (1971, c. 392, s. 11; c. 1244, s. 14.)

§ 116-209.20. Public purpose. — No expenditure of funds under this Article shall be made for any purpose other than a public purpose. (1971, c. 392, s. 11.)

§ 116-209.21. Cooperation of the Board of Governors of the University of North Carolina. — The Board of Governors of the University of North Carolina shall provide the secretariat for the Authority. The Executive Director of the Authority, who shall be its principal executive officer, shall be elected by the Board of Directors of the Authority on nomination of the President of the University of North Carolina. (1971, c. 392, s. 11; c. 1244, s. 14.)

§ 116-209.22. Constitutional construction. — The provisions of this Article are severable, and if any of its provisions shall be held unconstitutional by any court of competent jurisdiction, the decision of such court shall not affect or impair any of the remaining provisions. (1971, c. 392, s. 11.)

§ 116-209.23. Inconsistent laws inapplicable. — Insofar as the provisions of this Article are inconsistent with the provisions of any general or special laws, or parts thereof, the provisions of this Article shall be controlling, except that no provision of the 1971 amendments to this Article shall apply to scholarships for children of war veterans as set forth in Article 4 of Chapter 165, as amended. (1971, c. 392, s. 11.)

ARTICLE 24.

Learning Institute of North Carolina.

§ 116-210. State agencies and institutions may contract with Learning Institute; audits. — The various agencies and institutions of the State of North Carolina are hereby empowered and authorized to enter into contracts and agreements with the Learning Institute of North Carolina, not inconsistent with its charter and the laws of the State of North Carolina. All funds involved shall be subject to audit by the State Auditor. (1965, c. 1174, s. 1.)

§ 116-211. Contracts for operation of Advancement School authorized. — The State Board of Education is hereby empowered and authorized to enter into a contract or contracts with the Learning Institute of North Carolina for the operation of the Advancement School at Winston-Salem, North Carolina. (1965, c. 1174, s. 2.)

Article 25.

Disruption on Campuses of State-Owned Institutions of Higher Education.

§ 116-212. Campus of state-supported institution of higher education subject to curfew. — The chancellor or president of any state-supported institution of higher learning may designate periods of time during which the campuses of such institutions and designated buildings and facilities connected therewith are off-limits and subject to a curfew as to all persons who are not faculty members, staff personnel, currently enrolled students of that institution, local law-enforcement officers, members of the national guard on active duty, members of the General Assembly, the Governor of North Carolina and/or his designated agents, persons authorized by the chief administrative officer of the institution or his designated agent, and any person who satisfactorily identifies himself as a reporter for any newspaper, magazine, radio or television station. Any person not herein authorized who comes onto or remains on said campus in violation of this section shall be punished as set out in G.S. 116-213. (1969, c. 860, s. 1.)

§ 116-213. Violation of curfew a misdemeanor; punishment. — (a) Any person who during such period of curfew utilizes sound-amplifying equipment of any kind or nature upon the premises subject to such curfew in an educational, administrative building, or in any facility owned or controlled by the State or a State institution of higher learning, or upon the campus or grounds of any such institution, without the permission of the administrative head of the institution or his designated agent, shall be guilty of a misdemeanor and punished as hereinafter set forth. For the purposes of this section the term "sound-amplifying equipment" shall mean any device, machine, or mechanical contrivance which is capable of amplifying sound and capable of delivering an electrical input of one or more watts to the loudspeaker, but this section shall not include radios and televisions.

(b) Any person convicted of violating any provision of G.S. 116-212 or 116-213, or who shall enter a plea of guilty to such violation or a plea of nolo contendere, shall be fined not exceeding five hundred dollars ($500.00) or imprisoned not exceeding six months, or both such fine and imprisonment, in the discretion of the court. (1969, c. 860, ss. 2, 3.)

Chapter 116A.

Escheats and Abandoned Property.

Sec.
116A-1. Escheats to Escheat Fund.
116A-2. Unclaimed real and personal property escheats to the Escheat Fund.
116A-3. Unclaimed personalty on settlements of decedents' estates to the Escheat Fund.
116A-4. Other unclaimed personalty.
116A-4.1. Uncashed money orders and traveler's checks.
116A-5. Unclaimed funds held or owing by life insurance companies.
116A-6. Certain unclaimed bank deposits to Escheat Fund.
116A-6.1. Certain unclaimed postal savings system accounts to Escheat Fund.
116A-7. Other escheats.
116A-7.1. Reports required.
116A-7.2. Penalty for failure to make reports.
116A-8. Escheat Fund.
116A-9. Distribution of income of fund.
116A-10. Terms of loans.
116A-11. Statute of limitations.

§ 116A-1. Escheats to Escheat Fund. — All real estate which has heretofore accrued to the State, or shall hereafter accrue from escheats, shall be vested in the Escheat Fund. Title to any such real property which has escheated to the Escheat Fund shall be conveyed by deed in the manner now provided by G.S. 146-74 through 146-78, except as is otherwise provided herein: Provided, that in any action in the superior court of North Carolina wherein the State Treasurer is a party, and wherein said court enters a judgment of escheat for any real property, then, upon petition of the State Treasurer in said action, said court shall have the authority to appoint the State Treasurer or his designated agent as a commissioner for the purpose of selling said real property at a public sale, for cash, at the courthouse door in the county in which the property is located, after properly advertising the sale according to law. The said commissioner, when appointed by the court, shall have the right to convey a valid title to the purchaser of the property at public sale. The funds derived from the sale of any such escheated real property by the commissioner so appointed shall thereafter be paid by him into the Escheat Fund. (Const., art. 9, s. 7; 1789, c. 306, s. 2; P. R.; R. C., c. 113, s. 11; Code, s. 2626; Rev., s. 4282; C. S., s. 5784; 1947, c. 494; 1961, c. 257; 1971, c. 1135, s. 2.)

Editor's Note. — For a brief discussion of the 1947 amendment to this section and other provisions relating to escheats, see 25 N.C.L. Rev. 421.

For comment on escheat of intangible property, see 2 Wake Forest Intra. L. Rev. 100 (1966).

Right Conferred by Constitution and Extended by Statute. — See Board of Educ. v. Johnston, 224 N.C. 86, 29 S.E.2d 126 (1944).

When Real Property Escheats. — Real property escheats only when the owner dies intestate or dies testate without disposing of the same by will and without leaving surviving any heir, kindred or spouse to inherit under the laws of this State. In re Estate of Nixon, 2 N.C. App. 422, 163 S.E.2d 274 (1968).

Land held by incorporated town held to escheat upon repeal of town charter under the facts of the case. University of North Carolina v. City of High Point, 203 N.C. 558, 166 S.E. 511 (1932).

§ 116A-2. Unclaimed real and personal property escheats to the Escheat Fund. — Whenever the owner of any real or personal property situated or located within this State dies intestate, or dies testate but did not dispose of all real or personal property by will, without leaving surviving any heirs, kindred or spouse to inherit said property under the laws of this State, such real and personal property shall escheat. The State Treasurer shall have the right to institute a civil action in the superior court of any county in which such real or personal property is situated, against any administrator, executor, and unknown heirs or unknown claimants as party defendants, which unknown heirs or

unknown claimants may be served with summons and notice of such action by publication as is now provided by the laws of this State. The superior court in which such civil action is instituted shall have the authority to enter a judgment therein declaring the real and personal property unclaimed as having escheated, and the real property may be sold according to the provisions of G.S. 116A-1. A default final judgment may be entered by the clerk of the superior court in such cases when no answer is filed by the administrator, executor, unknown heirs or unknown claimants to the complaint, or if any answer is filed the allegations of the complaint are either admitted or not denied by such party defendants, and no claim is made in the answer to the property left by said deceased person. The funds derived from such sale shall be paid into the Escheat Fund where said funds, together with all other escheated funds, shall be held without liability for profit, or interest subject to any just claims therefor. (1957, c. 1105, s. 1; 1971, c. 1135, s. 2.)

§ 116A-3. Unclaimed personalty on settlements of decedents' estates to the Escheat Fund. — All sums of money or other personal estate of whatever kind which shall remain in the hands of any administrator, executor, administrator c.t.a., or personal representative when the administration of an estate of a person dying intestate, or partially intestate, without leaving any known heirs or spouse to inherit same, is ready to be closed, unrecovered or unclaimed by suit, by creditors, next of kin, or others entitled thereto, shall, prior to the closing of the administration of the estate, be paid, or delivered, by such administrator or executor to the State Treasurer as an escheat and shall be included in the disbursements in the final account of such estate. In such cases as above described, the State Treasurer is authorized to demand, sue for, recover, and collect such unclaimed moneys or other personal estate of whatever kind from any administrator, or executor after the estate is ready to be closed, or from the clerk of the superior court if the unclaimed assets have been paid over to him, and the State Treasurer shall hold the same without liability for profit or interest, subject to any just claims therefor. The provisions of this section and G.S. 116A-2 shall apply to the estate of a person missing for seven years and the State Treasurer may bring an action to have an administrator appointed in such case. (1957, c. 1105, ss. 2, 2½; 1971, c. 1135, s. 2.)

§ 116A-4. Other unclaimed personalty. — Personal property of every kind, except as is otherwise provided by this Chapter, including dividends of corporations, or of joint-stock companies or associations, including savings and loan associations, choses in action, and sums of money in the hands of any person including clerks of federal courts, firm or corporation which shall not be recovered or claimed by the parties entitled thereto for three years after the same shall become due and payable, shall be deemed derelict property, and shall be paid or delivered to the Escheat Fund and held without liability for profit or interest until a just claim therefor shall be preferred by the parties entitled thereto. (Code, ss. 2628, 2629; Rev., s. 4284; C. S., s. 5786; 1947, c. 614; s. 2; 1957, c. 1049; 1971, c. 1113; c. 1135, s. 2.)

Cross Reference. — See note under § 116A-1.

Escheat Officer Not Liable. — Funds representing amounts apportioned to claimants of an insolvent bank who failed to prove their claims, which are turned over to the Secretary of State as escheat officer, are not assets of the liquidated bank, but are to be held by the University, subject solely to the rights of those who failed to prove their claims, and a depositor who proved his claim and received dividends thereon as a common claim may not hold the escheat officer liable for the balance unpaid on his claim upon his contention that the claim should have been paid in full as a preferred claim. Windley v. Lupton, 212 N.C. 167, 193 S.E. 213 (1937).

All Unclaimed Property Held by the Various Types of Hospitals Escheat Pursuant to This Statute. — See opinion of Attorney General to Mr. Edward E. Hollowell, 42 N.C.A.G. 14 (1972).

§ 116A-4.1. Uncashed money orders and traveler's checks. — (a) Any funds held or owing by any organization for the payment of any money order or traveler's check on which such organization is directly liable shall be deemed abandoned property and shall be paid to the Escheat Fund:

(1) When the instrument in the case of a money order has been outstanding seven years from the date of its issuance or in the case of a traveler's check when it has been outstanding 15 years from the date of its issuance, and

(2) When the last known address of the apparent owner of the instrument is in this State.

Where the records of the holder of the funds do not show a last known address of the apparent owner of a money order or traveler's check, it is presumed that the last known address of the person entitled to the funds is in the state in which the money order or traveler's check was issued. Any money order or traveler's check held by any person, firm or corporation which remains unclaimed shall be deemed abandoned and paid to the Escheat Fund after three years.

(b) On or before the first day of June of each year, every organization shall pay to the State Treasurer all funds deemed abandoned pursuant to this section as of December 31 of the previous year. Such payment shall be accompanied by a statement setting forth such information as the State Treasurer may require.

(c) Any holder who has paid to the Escheat Fund moneys deemed abandoned property pursuant to the provisions of this section may make payment to any person appearing to such holder to be entitled thereto, and upon proof of such payment, the State Treasurer shall forthwith reimburse such holder to the extent of the full amount, without interest, paid into the Escheat Fund with respect to the instruments involved. If a holder declines or is unable to make payment to any person claiming ownership of funds paid to the Escheat Fund, the person claiming ownership may submit his claim to the State Treasurer who shall pay such claimant forthwith upon submission of adequate proof of ownership. (1971, c. 1135, s. 2.)

§ 116A-5. Unclaimed funds held or owing by life insurance companies. — (a) Definitions. — The term "unclaimed funds" as used in this section shall mean and include all moneys held and owing by any life insurance company doing business in this State which shall have remained unclaimed and unpaid for five years or more after such moneys became due and payable under any life or endowment insurance policy, or moneys payable under annuity contracts or all dividends payable to holders of policies. A life insurance policy not matured by the prior death of the insured shall be deemed to be matured and the proceeds thereof shall be deemed to be "due and payable" within the meaning of this section when the insured shall have attained the limiting age under the mortality table on which the reserve is based. Moneys shall be deemed to be "due and payable" within the meaning of this section although the policy shall not have been surrendered nor proofs of death submitted as required and although the claim as to the payee is barred by a statute of limitations.

(b) Scope. — This section shall apply to all unclaimed funds, as herein defined, held and owing by any life insurance company doing business in this State where the last known address, according to the records of such company, of the person entitled to such funds is within this State, provided that if a person other than the insured be entitled to such funds and no address of such person be known to such company or if it be not definite and certain from the records of such company what person is entitled to such funds, then in either event it shall be presumed for the purposes of this section that the last known address of the person entitled to such funds is the same as the last known address of the insured according to the records of such company.

(c) Reports. — Every such life insurance company shall on or before the first day of May of each year make a report in writing to the Commissioner of

Insurance of all unclaimed funds, as hereinbefore defined, held or owing by it on the thirty-first day of December next preceding. Such report shall be signed and sworn to by an officer of such company and shall set forth:

(1) In alphabetical order the full name of the insured, his last known address according to the company's records, and the policy number;
(2) The amount appearing from the company's records to be due on such policy;
(3) The date such unclaimed funds became payable;
(4) The name and last known address of each beneficiary or other person who, according to the company's records, may have an interest in such unclaimed funds; and
(5) Such other identifying information as the Commissioner of Insurance may require.

(d) Notice; Publication. — On or before the first day of September following the making of such reports under this section, the Commissioner of Insurance shall cause to be published notices entitled: "Notice of Certain Unclaimed Funds Held or Owing by Life Insurance Companies." Each such notice shall be published once a week for two successive weeks in a newspaper published in the county of this State in which is located such last known address of each such insured, or other person who, according to the company's records may have an interest in such unclaimed fund, or by posting such notice at the courthouse door of said county.

The notice shall set forth in alphabetical order the names contained in such reports of each insured whose last known address is within the county of publication together with:

(1) The amount reported due and the date it became payable,
(2) The name and last known address of each beneficiary or other person who, according to the company's records, may have an interest in such unclaimed funds, and
(3) The name and address of the company.

The notice shall also state that such unclaimed funds will be paid by the company to persons establishing to its satisfaction before the following December 1 their right to receive the same, and that not later than December 1 such unclaimed funds still remaining will be paid to the Escheat Fund which shall thereafter be liable for the payment thereof.

It shall be not obligatory upon the Commissioner of Insurance to publish any item of less than fifty dollars ($50.00) in such notice, unless the Commissioner of Insurance deems such publication to be in the public interest. The expenses of publication shall be charged against the Escheat Fund.

(e) Payment to the Escheat Fund. — All unclaimed funds contained in the report required to be filed under this section, excepting those which have ceased to be unclaimed funds since the date of such report, shall be paid over to the Escheat Fund on or before the following December 1.

The Commissioner of Insurance shall have the power, for cause shown, to extend for a period of not more than one year the time within which a life insurance company shall file any report and in such event the time for publication and payment required by this section shall be extended for a like period.

(f) Custody of Unclaimed Funds; Insurers Exonerated. — Upon the payment of such unclaimed funds to the Escheat Fund, the State shall assume, for the benefit of those entitled to receive the same and for the safety of the money so paid, the custody of such unclaimed funds, and the life insurance company making such payment shall immediately and thereafter be relieved of and held harmless by the State from any and all liability for any claim or claims which exist at such time with reference to such unclaimed funds or which thereafter

may be made or may come into existence on account of or in respect to any such unclaimed funds.

(g) Reimbursement for Claims Paid by Insurers. — Any life insurance company which has paid to the Escheat Fund moneys deemed unclaimed funds pursuant to the provisions of this section may make payment to any person appearing to such company to be entitled thereto, and upon proof of such payment the State of North Carolina shall forthwith reimburse such company to the extent of the full amount, without interest, paid the Escheat Fund for the account of such claimant.

(h) Determination and Review of Claims. — Any person entitled to unclaimed funds paid to the Escheat Fund may file a claim at any time with the Commissioner of Insurance. The Commissioner of Insurance shall possess full and complete authority to accept or reject any such claim. If he rejects such claim or fails to act thereon within 90 days after the receipt of such claim, the claimant may make application to the Superior Court of Wake County, upon not less than 30 days' notice to the Commissioner of Insurance and the State Treasurer for an order to show cause why he should not accept and order paid such claim.

(i) Payment of Allowed Claims. — Any claim which is accepted by the Commissioner of Insurance or ordered to be paid by a court of competent jurisdiction shall be paid by the Escheat Fund.

(j) Records Required. — The State Treasurer shall keep a public record of each payment of unclaimed funds received from any life insurance company. Such record shall show in alphabetical order the name and last known address of each insured, and of each beneficiary or other person who, according to the company's records, may have an interest in such unclaimed funds, and with respect to each policy, its number, the name of the company, and the amount due. (1949, c. 682; 1957, c. 1050; 1961, c. 493; 1971, c. 1135, s. 2.)

§ 116A-6. Certain unclaimed bank deposits to Escheat Fund. — All bank deposits in connection with which no debits or credits have been entered within a period of five years, and where the bank is unable to locate the depositor or owner of such deposit, shall be deemed derelict property and shall be paid to the Escheat Fund and held, without liability for profit or interest, until a just claim therefor shall be preferred by the parties entitled thereto. The receipt of the Escheat Fund of any deposit hereunder shall be and constitute a release of the bank delivering over any deposit coming within the provisions of this section from any liability therefor to the depositor or any other person. Upon receipt of such funds, the State Treasurer shall cause to be posted and kept posted for 30 days at the courthouse door of the county in which such bank is located, a notice giving the names of the persons in whose name or names such deposits were made in said bank, the amount thereof, and the last known address of such person, and the bank paying over said funds to the Escheat Fund shall furnish such information to be used in giving said notice. If any person at any time thereafter shall appear and show that he is the identical person to whom such funds are due, the State Treasurer shall pay the same in full to such person, but without any liability for interest or profits thereon. Debits of service charges and debits of intangible taxes made by banks shall not be considered debits within the meaning of this section. A bank shall be deemed to be unable to locate a depositor or owner when the present address of the depositor or owner is unknown to the bank, and the United States mail addressed to the depositor or owner at the last known address, with a return address of the sending bank on the envelope, is returned undelivered to the bank mailing the same. (1937, c. 400; 1939, c. 29; 1947, c. 614, s. 3; 1949, c. 1069; 1971, c. 1135, s. 2.)

Cross References. — See note to § 116A-1. As to escheat of dividends on unclaimed deposits in insolvent banks, see § 53-20, subsection (l).

Editor's Note. — See 15 N.C.L. Rev. 350. For comment on the 1949 amendment, see 27 N.C.L. Rev. 427. For comment on escheat of intangible property, see 2 Wake Forest Intra. L. Rev. 100 (1966).

§ 116A-6.1. Certain unclaimed postal savings system accounts to Escheat Fund. — (a) Declaration of Escheat. — All postal savings system accounts created by the deposits of persons whose last known addresses are in this State which have not been claimed by the persons entitled thereto before May 1, 1971, are presumed to have [been] abandoned by their owners and are declared to escheat and become the property of this State.

(b) Obtaining Information on Accounts. — The State Treasurer shall request from the Bureau of Accounts of the United States Treasury Department records providing the following information: the names of depositors at the post offices of this State whose accounts are unclaimed, their last addresses as shown by the records of the Post Office Department, and the balance in each account. He shall agree to return to the Bureau of Accounts promptly all account cards showing last addresses in another state.

(c) Proceeding to Adjudicate Escheat. — The State Treasurer may bring proceedings in the Superior Court of Wake County to escheat unclaimed postal savings system accounts held by the United States Treasury Department. A single proceeding may be used to escheat as many accounts as may be available for escheat at one time.

(d) Notice. — The State Treasurer shall notify depositors whose accounts are to be escheated as follows:

(1) A letter advising that a postal savings system account in the name of the addressee is about to be escheated and setting forth the procedure by which a deposit may be claimed shall be mailed by first-class mail to the named depositor at the last address shown on the account records for each account to be escheated having an unpaid principal balance of more than twenty-five dollars ($25.00).

(2) A general notice of intention to escheat postal savings system accounts shall be published once in each of three successive weeks in one or more newspapers which combine to provide general circulation throughout this State.

(3) A special notice of intention to escheat the unclaimed postal savings system accounts originally deposited in each post office must be published once in each of three successive weeks in a newspaper published in the county in which the post office is located or, if there is none, in a newspaper having general circulation in the county. This notice must list the names of the owners of each unclaimed account to be escheated having a principal balance of three dollars ($3.00) or more.

(e) Collection and Deposit of Funds. — The Treasurer shall present a copy of each final judgment of escheat to the United States Treasury Department for payment of the principal due and the interest computed under regulations of the United States Treasury Department. The payment received shall be deposited in the Escheat Fund.

(f) Indemnification of the United States. — This State shall indemnify the United States for any losses suffered as a result of the escheat of unclaimed postal savings system accounts. The burden of the indemnification falls upon the fund into which the proceeds of the escheated accounts have been paid. (1971, c. 1184, ss. 1-6.)

§ 116A-7. Other escheats. — (a) Unpaid and unclaimed salary, wages or other compensation due to any person or persons from any person, firm, or corporation within the State are hereby declared to be escheats coming within the laws of

this State, and the same shall be paid to the Escheat Fund immediately upon the expiration of two years from the end of the calendar year in which the same becomes due, provided, that this subsection shall not apply to any person, firm or corporation employing less than 25 persons.

(b) Rebates and returns of overcharges and unclaimed meter deposits due by utility companies, which have not been paid to or claimed by the persons to whom they are due within a period of two years from the time they are due or from the time any refund was ordered by any court or by the Utilities Commission, shall be paid to the Escheat Fund.

(c) All moneys in the hands of clerks of the superior court, the State Treasurer, or any other officer or agency of the State or county, or any other depository whatsoever, as proceeds of the limitations of State banks by receivers appointed in the superior court prior to the Liquidation Act of 1927, shall be immediately turned over into the custody of the Escheat Fund: Provided, however, that nothing in this section shall be construed to require the said clerk or other officer to turn over funds of minors or other incompetents in his possession, but the custody and control of the same shall be under existing law with reference thereto.

(d) All moneys in the hands of the Treasurer of the State, represented by State warrants in favor of any person, firm, or corporation, whatsoever, which have been unclaimed for a period of five years, shall be turned over to the Escheat Fund.

(e) Unpaid and unclaimed dividends or other distributions due to any person or persons from any association organized under Subchapter IV or Subchapter V of Chapter 54 of the General Statutes are hereby declared to be escheats coming within the laws of this State, and the same shall be paid to the Escheat Fund immediately upon the expiration of three years from the time the same became due. Provided that this section shall not apply to the Agricultural Fund now on hand known as the State Warehouse Fund.

(f) Any funds derived from the liquidation of any national bank organized and operated in this State, which has heretofore or which shall hereafter become insolvent, when such insolvent bank has been fully liquidated by a receiver appointed by the Comptroller of the Currency as provided by Title 12 of United States Code Annotated, sections 191 and 192, or any other federal law, or has been liquidated by any agent appointed as provided by Title 12 of United States Code Annotated, section 197, which shall remain under the control of the Comptroller of the Currency and deposited with the Treasurer of the United States, or deposited elsewhere, as authorized by law, which shall be due any depositor or stockholder of this State, which for a period of 10 years after becoming due such depositor or stockholder or available for distribution to any stockholder in the liquidation of such insolvent bank, has not been paid over to such depositor or stockholder, or the legal representative of such depositor or stockholder, due to inability to locate and deliver the same to the person entitled thereto, shall be deemed derelict property and shall be paid over to the Escheat Fund by the Comptroller of the Currency, or by such agent as may have the funds in charge, to be held in protective custody by the Escheat Fund until a just claim shall be made for same by the owner thereof. Upon payment of such funds to the Escheat Fund, the Comptroller of the Currency, or any agent having such funds in charge, shall be relieved of all further liability therefor.

Upon receipt of such funds the State Treasurer shall cause to be posted, and keep posted for 30 days, at the courthouse door of the county in which such insolvent national bank did business, a notice giving the names of the persons to whom such amounts so paid over were due, the amount thereof and the last known address of such person, and the source from which such funds were received: Provided, the Comptroller of the Currency or liquidating agent of such insolvent national bank shall furnish such information to the State Treasurer

when such funds are so paid over to it. If any person at any time thereafter shall appear and show that he is the identical person to whom any part of such fund, is due, the State Treasurer shall pay such part in full to such person, but without any liability for interest or profits thereon. (1939, c. 22; 1947, c. 614, s. 1; c. 621, s. 2; 1953, c. 1202, ss. 1, 2; c. 1205; 1957, c. 1051; 1971, c. 1135, s. 2.)

Cross Reference. — As to escheat of dividends on unclaimed deposits in insolvent banks, see § 53-20, subsection (l).

Editor's Note. — For comment on escheat of intangible property, see 2 Wake Forest Intra. L. Rev. 100 (1966).

Under the Facts Stated in the Opinion, This Statute Is Applicable to a One-Product Cooperative Marketing Association. — See opinion of Attorney General to Honorable Edwin Gill, State Treasurer, 42 N.C.A.G. 12 (1972).

§ 116A-7.1. Reports required. — A certified copy of the balance sheet or final statement for each calendar year of any person, firm or corporation having 25 or more employees in the State of North Carolina shall be filed with the North Carolina tax return of such person, firm or corporation indicating in a separate account or as a separate item in the "surplus" account the following:

(1) All unclaimed salaries, wages and other compensation from any person, firm or corporation employing 25 or more people unclaimed for two years which escheat pursuant to G.S. 116A-7;

(2) All unclaimed dividends of corporations, joint stock companies or associations unclaimed for three years which escheat pursuant to G.S. 116A-4;

(3) All rebates and returns of overcharges and unclaimed meter deposits due by utility companies unclaimed for two years which escheat pursuant to G.S. 116A-7; and

(4) Unclaimed dividends or other distributions due from any association organized under Subchapter IV or Subchapter V of Chapter 54 of the General Statutes unclaimed for three years which escheat pursuant to G.S. 116A-7. (1971, c. 1110, s. 1.)

§ 116A-7.2. Penalty for failure to make reports. — It shall be the duty of the State Treasurer and of the Attorney General to see that all reports required by the escheat provisions are properly made at the time and in the manner and form provided and to take any necessary action to secure compliance with the provisions of Chapter 116A of the General Statutes regarding escheats. Any holder who shall fail, neglect or refuse to make and file any required report shall be liable to the State of North Carolina in the sum of three hundred dollars ($300.00) for each and every such failure, neglect or refusal, and an additional sum of ten dollars ($10.00) for each and every day of the period of default. Such penalty may be recovered by the State in an appropriate legal proceeding instituted by the State upon the relation of the State Treasurer. The proceeds of any penalty or judgment recovered in such action shall be paid to the State Treasurer to be added to the Escheat Fund and to be held by the State Treasurer absolutely and in fee simple.

The recovery of such penalty shall not relieve the defendant-holder from the duty of making and filing said reports. The State of North Carolina, upon relation of the State Treasurer, shall have the benefit of the remedy of mandamus to compel compliance with the requirements of the escheat provisions relative to the making and filing of said reports, or the State Treasurer may compel compliance by suit and/or bill for discovery. (1971, c. 1109, s. 1.)

§ 116A-8. Escheat Fund. — (a) The Escheat Fund shall be established by the State Treasurer and maintained by him as a separate fund. All funds which escheat shall be paid to the State Treasurer. Any funds previously escheated

to the Escheat Fund which are claimed by their rightful owner shall be returned by the State Treasurer from the Escheat Fund.

(b) The payment of any funds described in this Chapter, or the transfer of any personal property described in this Chapter, to the Escheat Fund shall relieve any person, firm, association or corporation, or any State or federal official or agency of further liability therefor.

(c) The State Treasurer shall deposit or invest the Escheat Fund in his discretion, as provided for State funds generally. (1971, c. 1135, s. 3.)

§ 116A-9. Distribution of income of fund. — The income derived from the investment or deposit of the Escheat Fund shall be distributed annually on or before July 1 to the State Education Assistance Authority for loans to aid worthy and needy students who are residents of this State and are enrolled in public institutions of higher education in this State. (1971, c. 1135, s. 3.)

§ 116A-10. Terms of loans. — Loans made by the State Education Assistance Authority shall be made under terms of other loans made by the Authority. (1971, c. 1135, s. 3.)

§ 116A-11. Statute of limitations. — Any property, real or personal, which has escheated to the University of North Carolina or the Escheat Fund, of which the State Treasurer is custodian, shall be subject to refund for a period of seven years from the date on which it first became due and payable to the Escheat Fund. After the expiration of seven years, the University or Escheat Fund and the State Treasurer as custodian shall cease to be liable and may not pay such funds to one claiming to be the rightful owner.

No action may be brought after the expiration of the seven-year period against the State, the University, the Escheat Fund and the State Treasurer or any agents thereof for the refund of escheated property. (1971, c. 1111, s. 1.)

STATE OF NORTH CAROLINA

DEPARTMENT OF JUSTICE

Raleigh, North Carolina

March 1, 1975

I, Rufus L. Edmisten, Attorney General of North Carolina, do hereby certify that the foregoing recompilation of the General Statutes of North Carolina was prepared and published by The Michie Company under the supervision of the Division of Legislative Drafting and Codification of Statutes of the Department of Justice of the State of North Carolina.

RUFUS L. EDMISTEN
Attorney General of North Carolina

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